Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

NO. 04

IN THE

SUPREME COURT OF THE UNITED STATES

Ackleema Ally, d/b/a Ahmad Meat Market

Petitioner,

v.

Richard S. Graver, Sheriff Kerry J. Katsorhis, Deputy Sheriff Martello, Chandra Kishore and Prabha Palmour a/k/a Ralph Sukhoo and Rosaline Sukhoo

Respondents

On Petition For Writ Of Certiorari To the United States Court of Appeals For the Second Circuit

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PETITION FOR WRIT OF CERTIORARI

Ackleema Ally
pro-se petitioner
696 Ilyssa Way
Staten Island, New York 10312
(718) 605 8673

QUESTIONS PRESENTED

1. Whether the petitioner Ally was denied equal protection of the Law, accorded her by the 14th Amendment of the Constitution of the United States?

2. Whether the petitioner Ally was denied of her right to proce -dural due process of the Law?

3. Whether the petitioner Ally was deprived of her property with out due process of the Law?

4. Whether the petitioner Ally's property was taken without just compensation?

5. Whether the seizure of the petitioner Ally's business premises impair the obligation of her contract?

6. Whether the unreasonable seizure of the petitioner Ally's property was unlawful, since there was no probable cause for the seizure?

7. Whether the petitioner Ally was denied the opportunity to be heard of the substantive due process?

8. Whether Collateral Estoppel and Res Judicata could be raised by motion to dismiss or only by answer?

9. Whether an attorney can issue an execution/order, or warrant by his hand without authorization from the Court to the City Sheriffs for execution, or only by warrant issued by the hand of a Judge to the City Sheriffs?

10. Whether the City Sheriff can seize private property with out a warrant and without probable cause?

11. Whether the City Sheriff can seize private property by an execution that was written by the hand of an attorney with out the authorization of the Court or only by warrant issued by the hand of a Judge.

12. Whether it is a violation of the 5th Amendment "Taking Clause," for a State to seize private property and give it to a private person for private use?

PARTIES TO THE PROCEEDING

All parties to the proceedings are identified in the caption of the case. Ackleema Ally was doing business as Ahmad Meat Market, the premises was constructed and developed to be used as a Halal Meat and ancillary products store. The petitioner alleg -ed that two of the respondents were new owners of the building where her business premises were located, one is an attorney, one is a City Sheriff of New York City and one is the Deputy Sheriff of the City Sheriff of New York City.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6 the Petition is filed on behalf of an individual, who is the sole proprietor and doing business as Ahmad Meat Market. The corporate disclosure statement is not applicable, since the business is not a corporation.

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STATUTES AND RULES

28 U.S.C.# 1254, 1257, 1257(a)
28 U.S.C.#1331; Constitution; Supremacy Clause Art. VI & III

Pursuant to 28U.S.C.A#1331 which said that, "Where a City in the exercise of delegated state powers, transgresses the Federal Constitution, the Federal Courts have jurisdiction, though the act is not authorized or may have been forbidden by the state. Portland Ry.,Light &Power Co. v.City of Portland,D.C.Or. 1914, 210F.667.

Also, pursuant to U.S.C.A.28#1331 which said that, "When complaint alleges that a municipality or other government entity itself acts in violation of the Constitution, subject matter jurisdiction is present under this section if the jurisdictional amount is met. Dr.

STATUTES AND RULES---Continued

Martin Luther King, Jr. Movement Inc. v. City of Chicago D.C.Ill. 1977, 435 F. Supp.1289.

Also pursuant to U.S.C.A. 28 #1331 which said that, "An allegation that a city intended forcibly to remove a transmission wire belonging to complainants who had a perpetual franchise to use the streets, and thereby to deprive complainants of their property without due process of law and toimpair the obligation of their contract presented a substantial claim under the Constitution, sufficient to sustain jurisdiction of the United States Court. South Covington & C. St. Ry. Co. v City of Newport, Ky.1922, 42 S.Ct. 418, 259 U.S. 97, 66 L.Ed. 842. Pursuant to U.S.C.A.28#1331 which said that, Question of whether property was taken without due process or just compensation constitutes a "Federal question within jurisdictional Statute. Jim Young Development Corp. v State Highway Commission of Mo. D.C.Mo.1971, 56 F.rd 38.

Pursuant to U.S.C.A 28#1331 which said that,"If state legislation impaired the obligation ofa contract or deprived of property without due process of law, or denied the equal protection of the laws, remedies were found in former#41(1) of this title. Holt v Indiana Mfg. Co., Ind.1900, 20 S. Ct. 272, 176U.S. 68, 44 L. Ed.374. Pursuant to FPLR 12#341which said that,"Complaint should not be dismissed of lack of subject-matter jurisdiction,if it reveals that any ground for jurisdiction exists.Jorsch v LeBeau,D.C.Ill.1978,449F.Supp.485

Pursuant to FPLR 12#610 which said that, "A complaint should not be dismissed for failure to state aclaim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of a claim that would entitle him to relief and if plaintiff is filing pro-se, court should construe complaint broadly,andnot hold it to the same standards as complaint drafted by an attorney. Young v Calhoun S. D.N.Y. 1987, 656 F. Supp. 970. Pursuant to FPLR 12#610 which said that, pro-se complaint alleging deprivation of rights under color of state law should not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no

STATUTES AND RULES---Continued

set of facts in supportof his claim which would entitle him to relief. Hudspeth v Figgins, C.A.Va. 1978, 584 F. 2d 1345. RPAPL#749 Subd. (1) provides: that upon rendering a final judgment for the petitioner in summary proceeding, the Court shall issue a warrant. RPAPL#749 Subd. (1) provides: "That upon rendering a final judgment for the petitioner in summary proceeding, the Court shall "issue a warrant directed to the sheriff of the County," CPLR 7102(a) makes clear that in an action to recover possession of a chattel, the sheriff may not proceed with a prejudgment seizure of the chattel without prior authorization of the Court.

Pursuant to FRCP Rule 41 provides: Dismissal with prejudice of class members who failed to answer interrogatories or appear for depositions was improper where there was no attempt to determine whether information sought was necessary or whether interrogatories propound to the class members or depositions were a mere stratagem to diminish class membership and there was no showing with respect to merits of defendants' request for discovery. Clark v Universal Builders Inc.,C.A.111.1974,501F.Supp.2d324. Pursuant to FRCP#28: Rule 42: An order consolidating two actions did not merge them,but was only a convenience merely obviating duplication of papers and the like.Greenberg v Giannini,C.C.A.N.Y.1944, 140 F.2d. 550, 152 A.L.R.966.

Pursuant toFRCP28 U.S.C.A.Rule 64: Federal Court is bound by State Law when a state created seizure is used. U.S.v Sinclair.D.C. Del.1972,347 F. Supp.1129. Pursuant to CPLR 7B, Art 6: In the joint trial of separate actions there are separate verdicts, taxations of costs and judgments. Vidal v Sheffield Farms Co., 1955, 208 Misc. 438, 141N.Y.S. 2d 82. Pursuant to FRCP 28-Rule 8: Ordinarily, Res Judicata is affirmative defense, not raiseable by motion to dismiss. Philadelphia Transp. Co.,v South Eastern Pennsylvania Transp. Authority D.C. Pa 1968, 282 F.Supp.789.

STATUTES AND RULES---Continued

Pursuant to FRCP 28 Rule 8: Defendant's failure to deny allegations alleged in plaintiff's complaint constituted an admission of the facts alleged. Mc Comb v Blue StarAuto Stores C.S.111.1947, 164 F.2d. 329. Pursuant to FRCP 28-Rule 8: Court has duty to assist pro-se litigant who may not understand concepts of legal responsibility, and thus court would construe plaintiff's complaint to have included statement of claim based on theory of negligence through plaintiff submitted that defendant intentionally deprived plaintiff of property which he left behind when he escaped.Frazier

v Collins, D.C.Va, 1982, 538 F.Supp. 603.

Under former C.C.P. 1876#2244: Collateral Estoppel and Res Judicata could be raised only by answer and not by motion to dismiss. West's F.S.A. #713.67-713.69, permitting innkeeper to seize guests' property without prior notice or hearing for alleged non payment of rent.Violated this clause.Johnson v Riverside Hotel Inc.,D.C.Fla,1975,399 F. Supp.1138. Pursuant to FPLR 12#1228 which said that,"Considering unfamiliarity with legal requirements

and evident good faith in attempting to comply with order granting motion for more definite statement, plaintiff appearing pro-se was entitled to another opportunity to comply as opposed to dismissal. Schaedler v Reading Eagle Publication, Inc., C.A.Pa. 1967, 370 F 2d 795. Pursuant to FPLR 12#1861 which said that, "Court may resort to material outside the pleadings in passing on a motion to dismiss for lack of subject matter jurisdiction. Mims v Kemp.C.A. S.C.1975, 516 F. 2d 21.

OTHER AUTHORITIES

IN THE

SUPREME COURT OF THE UNITED STATES

No.

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Petitioner,

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals For the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The U.S. District Court's unpublished Memorandum and Order, Civil Judgment and Judgment dismissing Verified Complaint, are reproduced in the Appendix to this Petition at App. P 1a, 4a, 5a. The Second Circuit's order affirming the decision of the District Court is unpublished, and is reproduced at App.P:7a. Timely filed Petition for Rehearing is reproduced at App. P: 70a. The Order denying the Petition for Rehearing is reproduced at App.P: 143a The State of New York, Court of Appeals unpublished Order dismissed the Appeal, the order is reproduced in the Appendix this

Petition at App. P: 160a, and the unpublished Order that denied the Motion for leave to appeal is reproduced in the Appendix to this Petition at App. P: 162a.

The Supreme Court of New York State, Appellate Division,unpublished Order affirmed the Judgment and said (Ally's) remaining contentions are not properly before this Court on this appeal the order is reproduced in the Appendix to this Petition at App. 166a.

The Supreme Court of New York State, unpublished Judgment dated August 19, 1999 Index#23514/97, sanctioned Ally $10,000 and is reproduced in the Appendix to this Petition at App. P: 168a.

The Memorandum dated April 30,1999 Index #23514/97,is reproduced in the Appendix to this Petition at App. P: 170a. The unpublished Order dated March 25, 1999 Index#23514/97, is reproduced in the Appendix to this Petition at App. P: 172a. The unpublished Order dated Nov.23, 1998 Index#23514/97 sanctioned Ally $2,500, is reproduced in the Appendix to this Petition at App. P: 173a. The unpublished Order dated Nov. 23, 1998 Index #23514/97 is reproduced in the Appendix to this Petition at App. P: 176a. The unpublished Order dated Nov. 23,1998 Index No. 23514/97, is reproduced in the Appendix to this Petition at App. P: 178a. The unpublished Order dated Nov. 19, 1997 Index No. 23514/97, is reproduced in the Appendix to this Petition at App. 180a.

The Supreme Court of New York State unpublished Order dated May 28, 1997 Index #21625/95, is reproduced in the Appendix to this Petition at App. P: 182a. The unpublished Order dated Jan.13, 1997 Index#21625/95, is reproduced in the Appendix to this Petition at App. P: 184a. The unpublished Order dated December 2, 1996 Index#23087/95, and Index #21625/95, is to be tried jointly, each action shall retain its own Index # and separate Notes of Issue, the said order is reproduced in the Appendix to this Petition at App. P: 186a.

The unpublished Order dated Nov. 13, 1996 Index#21625/95,the Order is reproduced in the Appendix to this Petition at App. P: 189a. The unpublished Order dated May 17, 1996, Index # 21625/95, is reproduced in the Appendix to this Petition at App. P: 190a.

The Civil Court of New York City unpublished Order dated June 12, 1995 Index # 067496/95, is reproduced in the Appendix to this Petition at App. P:192a.

The Supreme Court of New York unpublished interlocutory Judgment Index #5610/91 is reproduced in the Appendix to this Petition at App. P:193a.

The Supreme Court of New York unpublished Judgment dated January 19, 1996 Index No. 5610/91, is reproduced in the Appen dix to this Petition at App.198a.

JURISDICTION

The Second Circuit decision affirming the District Court's dismissal of Ally's claims was entered on April 19, 2005, reproduced at App. 1d. Ally then filed a timely Petition for Rehearing on May 2, 2005 reproduced at Apple, and petition for Rehearing En Banc has been transmitted to the Judges for the Court and to any other judge that heard the appeal and no such judge has re -quested that a vote to be taken thereon. The Second Circuit en -tered its Order denying the Petition for Rehearing on September 21, 2005. The Order denying the Petition is reproduced at App. 1f. Petitioner Ally invokes the jurisdiction of this Court under 28 U.S. C.A. #1254 (1)(2000).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Supremacy Clause Art VI
Supremacy Clause Art 111
U.S.C.28 #1254 (1), U.S.C. 28#1257
U.S.C. 28#1257(a); U.S.C. 28#1331
Constitution; 14th Amendment Section 1
4th Amendment; 5th Amendment
Constitution Art 1#7; CPLR 7102
Constitution Amendment Art 1#12
West F.S.A #713.67-713.69
Equal Protection; Due Process
Loss of Income; Seizure; Res Judicata; Rights.
Relevant portions of these Constitutional and Statutory Provisions are set forth at App. P:161a-176a.

STATEMENT OF THE CASE FACTUAL BACKGROUND

This is an action to collect money damages of approximately $40,000,000 (Forty Million Dollars), punitive damages; financial business loss, loss of income; loss future income; extreme emotional upset, extreme distress and extreme hardship; fees together with costs and disbursements and interest thereon and for such other and further relief that this Court deems just and proper, for because of the unreasonable seizure of the petitioner' business premises, the petitioner Ally lost her business premises, business, and all the contents (stocks, machinery,equipments, fixtures, fittings etc) which also include all of her house-hold and personal property, excepting two pairs of shoes, a few pieces of clothing and her case materials which she had with her, and it was very sad and heart breaking for her to just stand there and see all that she had accumulated all her life were willfully, negligently, intentionally, deliberately, maliciously and tortiously destroyed and removed.

The petitioner Ackleema Ally believes that all the respondents

were the fruit of the unreasonable seizure, willful, fraudulent, burglary, intentional, deliberately, forcibly entry, trespass, illegal, conversion, destruction, negligent, collusion, malicious and tortious acts, and that the unreasonable seizure of her property was unlawful, since there was no probable cause for the seizure; which did impaired the obligation of her contract; that she was that she was deprived of her property without due process of the Law;and her property was taken without just compensation; the Petitioner Ally also believes that she was denied equal protection of the Law accorded her under the 14th Amendment of the Constitution of the United States; she was also denied of her right to procedur -al due process of the Law; and the opportunity to be heard of the substantive due process. Ally also believes that her constitutional rights according to Bill of Rights, of the 4th,14th,5th Amend ment, the Taking Clause of the 5thAmendment, of her equal protection rights under U. S. C. A Constitution Amendment 14; and her peace of mind were all violated which caused extreme hardship, extreme emotional distress, and extreme suffering and especially since she was a one parent family with three children to take care of,and that was the only income she was depending on, it was not easy, it was extreme, extreme hardship

1ST LANDLORD AND TENANT ACTION

On or about 10.am on April 18, 1986 Mr Hassan brought the lease and told Ally to sign it, and she read it before signing, but she saw that the lease was for 11 years and the date was from April 15,1986 to April 15, 1986, so she asked him if the lease is for a day, and he said that his wife made a mistake but he will get it fixed, she also asked him if she should go with him to get the lease notarized and he said, "no" because the notary people are his friends, and because Ally was a family friend to Mr Hassan's relatives, she trusted him. About an hour later Mr Hassan return -ed with the lease, the date April 15, 1986 to April 15, 1986 was changed to April 15, 1986 to April 15, 1997, 97 was written over the second 86, Ally then asked him if it will be ok and he said "yes, do not worry, if you have a problem just call me, he also said that he did not know the people in the store next to

mine and he gave them 8 (eight) years lease and since he knows me he is giving me a longer lease, because he knows that I have the children to take care of" Mr Hassan then asked Ally if she could make a copy of the lease for him and keep it he will pick it up another time, because he do not have the time to get a copy for himself, Ally got a copy for him and whenever she sees him she reminded him of his copy, but he never collected it. The said contract of lease, is for a tenancy of 11years with an annual rent of $4,800 ($400 monthly) and that said lease shall become effective as of April 15,1986. Ally entered the premises in April 1986, and thereafter was constructed and developed to be used as a Halal Meat and ancillary products store. On or around March 1987 Kamaral Hassan died.

On November 5th, 1987 and January 29, 1988 Chandra Kishore and Prabha Palmour, a/k/a Ralph Sukhoo and Rosaline Sukhoo went into contract of sale of the said building. On March 10, 1988 the original owner Nazmoon Hassan illegally and unlaw fully evicted Ally from the subject premises. On March 16, 1988 the said building was sold to Kishore and Palmour and Ally's store was not vacant and broom clean as said in the contract of sale. On June 30, 1988 petitioner Ally was granted temporary possession of the said business premises. During October 1988 Ally bought approximately$8,405in stock for the store,in November water poured down from the above apartment, and damag ed all the stocks, she informed the new owners about the damag es and they said they do not care. On November 29, 1988, Ally was permanently restored to possession of her business premises, but the new owners refused to accept her rent. Since the date that the new owners obtained title to the subject building they have caused to remain open a notorious dangerous, unsafe, defective, and unhealthy condition of an opening of the roof over Ally's store premises. Ally's business premises have become un usable as a store for which it was intended, the said use and oc cupancy has been disturbed and discontinued by the willful failure to repair and restore the subject business premises, although many requests were made by Ally's attorneys. In the store next to Ally's store had a fire and all the electrical wires in the build-

ing were damaged and the new owners deliberately refused to fix the wires in Ally's store.

ACTION INDEX NO. 5610/91
CONTRACT AND EJECTMENT

The new owners Kishore and Palmour commenced a Contract and Ejection action in 1991 (Index #5610/91) in the Supreme Court, County of Queens, against the original owner of the building Nazmoon Hassan and the tenant Ally. Ally then made a counter-claim against the new owners because they wrongfully and constructively ejected her from the business premises when they opened the roof of the building, destroyed her business premises and all the contents within,without informing her that they were going to repair the building. On November 10, 1993 the new owners wrote a letter to Ally, informing her that they agreed to accept her rent, but still water came down and the damages were not repaired. They accepted her rent from November 1993 to March 1994, but still refused to repair the damages they did, so on or around November 1993 Ally did the repairs and stocked her store and opened for business, but water came down again from the above apartment which created an unhealthy condition, and damage to the stocks, when Ally spoke to the new owners about the damages, they said that she was crazy, so again Ally could not continue with her business. On February 22,1994, just few months before the trial, Ally's new attorney Mr Goldberg informed the new owners about the unhealthy condition they are creating in Ally's store premises.

The trial of the action Index #5610/91 was in May 1994, before Hon. Herbert A Posner in the Supreme Court, County of Queens, the jury said that Ally's lease was altered from a one year lease to an eleven year lease after it was signed by the original owner Kamaral Hassan and given to Ally, and that she was not construc -tively evicted, an interlocutory judgment dated July 1, 1994 was then entered on July 15, 1994. The petitioner Ally was not ordered by the Court to remove at any time from the subject business premises, and no warrant was issued by the Court for Ally's

ejection and the trial for damages is still pending, so final judgment is still not granted to Kishore and Palmour as yet, and it is the warrant that cancels the lease and not the order. However, Hon. Justice Posner did say that Ally was illegally evicted on March 10, 1988 by the original owner Nazmoon Hassan. Ally made a cross-motion dated August 24, 1994, to modify or vacate the interlocutory judgment on the grounds of newly discovered evidence. Photographs showing Ally did the repairs and stocked the business premises before the trial, but the new owners again refused to accept her rent after the trial.

On October 15, 1995 Ally packed all of her personal and household property from her apartment into the store premises for a few weeks until she move into her new apartment since the building that she was living in was sold. She only took with her 2 pairs of shoes, a few pieces of clothing, and her case materials. Everything that she accumulated all her life were packed in there, her household and personal property were enough to furnish a three bedroom one family house.

SUBSEQUENT WRONGS BY THE DEFENDANTS

On October 31, 1994 after a hearing the new owners and their employees broke the locks and entered Ally's store premises and stole some of Ally's personal and household property, and other items from the store premises. On November 1, 1994 the two (2) workers were again seen inside the store premises removing the stocks from the shelves, and they were arrested. An illegal execution dated August 5, 1994 was prepared by Richard S. Graver and was delivered to the New York City Sheriffs for Ally's ejection and this execution was not served on Ally so she did not have the opportunity to defend herself. A 72 hour notice dated August 18, 1994 was prepared by the New York City Sheriffs, claiming that, "a final order has been made in the above proceeding (5610/91), and that a order has been issued commanding the Sheriff to remove you there from and put the plaintiff (Kishore & Palmour) in possession thereof. This 72 hour notice was never served on Ally, so again she did not have the oppor-

tunity to defend herself and the New York City Sheriffs made two false representation when they said that a final order has been made in the proceeding, when it is only an interlocutory judgment, and that a order has been issued commanding the Sheriff to remove you therefrom, when the Court did not issue any order commanding the New York City Sheriff to eject Ally.

On December 14, 1994 the said respondents seized Ally's business premises and all its contents which include all of her house hold and personal property. The respondents were seen many times destroying and removing the contents of the business premises, which include very important documents, school materials, gifts, many, many years of research materials, many, many books, very old religious books that are being used for research, clothing, furnitures, fixtures, fittings, the stocks, equipments, machinery, certificates and diplomas, passports and other identity documents, immigration papers, baking things and many cake decorating items, electronic items, sewing machine, lots of materials and patterns, many electrical items, craft books and other craft items and, many, many more items, enough to furnish a three bedroom one family home. It took Ally all her life to accumulate all that she had, and to stand there and see it all being destroyed and removed was not very easy, they kept everything in their possession and it was very upsetting, sad, and heart breaking to see the way they willfully, maliciously, tortiously, deliberately, and without any care (negligently) destroying and removing the contents of the said business premises.The respondents completely destroyed the life of petitioner Ally and her children,for she was a one parent family,and everything were completely destroyed and removed excepting for two pairs of shoes, a few pieces of clothing and her case materials that she had with her, which caused extreme emotional distress, extreme suffering, and extreme hardship. The police were called many times to look into the matter because the respondents were creat -ing a fight with Ally when she tried to stop them from destroying her things, but they could not do anything about it because the business premises with all its contents were seized by the New York City Sheriffs. Also let the form 064 show

the fact that the New York City Sheriffs did admit that they gave possession to Chandra Kishore on December 14, 1994 pursuant to an order of possession/execution to deliver real property issued out of the Supreme Court, Queens County,to the Sheriff of the City of New York, New York County Division. The City Sheriffs again made a false representation when they said that the order of possession/execution was issued out of the Supreme Court to the Sheriff of the City of New York, when the execution was from the respondent Richard S. Graver and not from the Supreme Court. After the ejection and seizure, Ally, Kishore and Palmour went back to the Supreme Court, Queens County and Hon. Justice Posner then asked to see the receipt of the Notice of Service of the 72 hour eviction notice and the execution, but their attorney Mr. Graver could not produce it, because it was not served.

On December 21, 1994 Ally moved by order to show cause why an order should not be entered stopping the plaintiffs (now respondents) and the sheriffs from destroying and removing the contents of the said store premises pending the trial on damages, since, a trial date was granted,and why a warrant for the arrest of the plaintiffs (now respondents) Kishore and Palmour should not be entered for break and enter also destruction and theft, and for stopping the sale of the said property, but it was denied. The return date for the motion to renew on the action 5610/91was Jan -uary 31, 1995 the respondents Chandra Kishore and Prabha Palmour nor their attorney Richard S. Graver appeared, so Justice Posner's clerk, Miss Brown called Mr.Graver and asked him if he forgot about the motion? Ally do not know what he said to her, but Ally heard her telling him that Ally would like to remove some of her things from the store premises, Miss Brown then told Ally that Mr Graver said that he will not allow her (Ally) to remove anything unless she pays $1,000.00

On May 8, 1995 Ally saw Prabha Palmour and a worker removing and willfully destroying her things that are in the store, Mrs Palmour wanted to create a fight with Ally, so Ally called

the police to look into the matter, but the police could not do anything because they were seized by the New York City Sheriffs Ally then filed an order to show cause in the Civil Court against Kishore and Palmour on or around May 15, 1995 and Ally was granted an order from Judge Schmidth, staying Kishore and Palmour from removing the contents of the said store and from re-etting the subject business premises. This case was adjourned for June 12, 1995.

On May 31, 1995 Ally received a phone call that Palmour was inside the store destroying and removing her things from the store premises, so Ally called the police before she went there, when she arrived there she found that the door of the store was locked from inside, so she started to take photographs of Ms Palmour from the outside of the glass windows when suddenly Ms Palmour disappeared, Ally could not understand where she went because the only entrance and exit was the front door which was locked from inside. Then a passerby told Ally, "Look she is up there screaming and shouting that you are killing her with a knife." The police arrived at the same time, so Ally gave them the order from the Court. When the police officer told Palmour to come down and open the store door, she refused to do so, so he started to bang her door to get it open, then Palmour told the officer that she will come down and open it,when the officer saw the hole in the wall, he told Ally to cover it with a board, and warned Palmour that she should immediately lock the store premises, because Ally had a order from the Court. Kishore and Palmour then went to the police precinct and Palmour started to cry and pretended that she was badly beaten up, and when the police offered to take her to the hospital she refused to go, and Ally was never near to her, for she was in a locked building and Ally was out on the side walk. Around the same time Ally went to the precinct to ask the police if they could check the second floor of the store building to see if the respondents have any of her things up there, or if they removed them completely from the building, when one of the police officers came up to her and said, "Miss Ally, I am very sorry about this, I know that it is wrong but I can do nothing about it, the old woman really fooled

the Superintendent and he told me to charge you." Ally asked the officer if the Superintendent spoke to the officer that was on the scene and he said, "No, because the officer was off duty." The next day Ally went back to the precinct and asked the officer who charged her if he spoke to the officer who was on the scene and he said, "No, because the officer was off duty." The next day Ally went back to the precinct and asked the officer who charged her if he spoke to the officer who was on the scene and he said, "Yes," he also said that the officer said that charging Ally was nonsense, for the old lady lied. Ally was not arrested but she was given a desk charge. This case went on for approximately one year in the Criminal Court then it was dismissed. Mr Graver opposed the motion in the Civil Court and it was dismissed with costs on June 12, 1995. Let the record show the facts of the harassment, extreme hardship, extreme emotional distress and extreme suffering the petitioner Ally went through because of the respondents actions.

PROCEEDINGS BELOW ACTIONS 21625/95&023087/95 WAS CONSOLIDATED FOR JOINT TRIAL: CONTRACT AND TORT

A Summons and verified complaint dated June 11, 1995 was then filed in the Supreme Court, County of Queens, Ally commenced this action Index #21625/95, against Kishore and Palmour for breaking into her business premises and removing some of her personal, and household property and other items from the store premises on October 31, 1994, when their workers were arrested. Kishore and Palmour did not answer Ally's verified com -plaint, so she moved for default judgment, then they appeared before Hon. Justice Goldstein when a stipulation was agreed up on, that Ally will withdraw her motion for default judgment and extend Kishore and Palmour's time to answer her verified complaint, and also for the action to be transferred to Justice Posner, since the original action Index #5610/91 was before him. When this action was transferred to Justice Posner Kishoreand Palmour still did not answer the verified complaint, so Ally then moved

again for default judgment, then Kishore and Palmour, moved by cross-motion to dismiss the complaint, claiming Res Judicata of the previous action Index No.5610/91.

On May 17, 1996, an order was signed by Justice Posner which said "The defendant (Kishore & Palmour) is confusing the prior action (5610/91) with this new complaint for damages and defendant's time to serve and file an answer is extended for 20days. This order confirmed to the defendants Kishore and Palmour, that their new wrongs are not Res Judicata of the action Index# 5610/91, and this action did not include the actions of Mr. Graver and the New York City Sheriffs. On October 19, 1995 Ally commenced another action Index #023087/95 against Kishore and Palmour for the complete destruction of Ally's business, and the contents of the said business premises which include all of her household and personal property and Richard S. Graver and the New York City Sheriffs were named in this action but not summoned to appear or plead at this time. On or around January 19, 1996 a judgment was entered granting Ally a money judgment of $3,000 against the original owner Nazmoon Hassan for the illegal eviction.

The May 17, 1996 order extended the defendants time to serve and file an answer for 20 days, but according to Ally's knowledge, the defendants did not serve their papers within the said time, so she made a motion for summary judgment and to strike their answer, but they cross-moved and told the Judge of Ally's other action Index#023087/95, then a order dated November 13 1996, denied the motion and awarded $500 in costs and sanctions to Kishore and Palmour for Ally's frivolous conduct in commencing separate actions for the same relief. (1). This order sanctioned Ally $500 because she brought another action in another Court, claiming that it was for the same relief, when it was for a completely different cause of action. (2). At this time Ally did not produce her evidence,the pin and the sworn affidavit of the witness who saw the defendants breaking the locks and removing the things off the store premises.

Ally then moved by motion to stay the execution of the said order dated November 13, 1996, but a order dated January 13, 1997 awarded $500 to Kishore and Palmour in costs and sanctions." The defendants did not answer Ally's verified Complaint Index #023087/9 so she moved for summary judgment on or about May 21, 1996, and since they still did not appear or plead in this action, she again moved for summary judgment on June 17, 1996, then, Kishore and Palmour cross-moved to consolidate the two actions Index #023087/95 and #21625/95.

On August 28, 1996 a memorandum was signed by Hon. Joseph M. Lane, who consolidated the actions Index#23087/95 with the action Index #21625/95 and he said that the two actions are combined and are referred to Hon. Herbert A. Posner for joint trial due to the fact that Justice Posner has the action with the lower Index #21625/95. The main motion denied without prejudice to renew before Justice Posner at the appropriate time." Ally then served and filed a proposed order, which was signed on December 2, 1996, the order said that the actions are combined for joint trial and that each shall retain its own Index# and separ -ate notes of issue shall be filed for each action.

On or about December 27,1996 Ally renew her motion for summary judgment on Index #023087/95, but it was denied, by order dated February 13, 1997. On March 24, 1997 the Ally filed two separate Notes of Issue, one for Index #21625/95 and the other for Index No. 023087/95. Then Mr Nicholas (Kishore and Palmour's attorney) wrote a letter to Ms Annmarie Brown (Justice Posner's Law Clerk) which said: "Dear Ms Brown: I have been served by Ackleema Ally with a Note of Issue and Certificate of Readiness for Trial, dated March 21, 1997 as well as a "Notice of Confirmation," dated February 21, 1997 (copies enclosed). The plaintiff Ackleema Ally, has failed to comply with either of the decisions of Hon. Herbert A Posner, filed and entered on November 25, 1996 and January 27, 1997, for which Notices of Entry were each served on January 30, 1997. She has neither provided her answers to defendants' Interrogatories, nor has she paid the imposed sanctions, totaling $1,000. It is my under stand

ing that the outstanding discovery of the information and documents requested through defendants' Interrogatories, and the requirement that Ms Ally pay he outstanding sanctions award, shall survive plaintiff's (Ally) filing of a Note of Issue. This will permit plaintiff to comply with the Court's directives without removing this case from the trial calendar.

On April 19, 1997 the petitioner Ally wrote to Ms Annmarie Brown (Justice Posner's Law Clerk)as reply to Mr Nicholas letter to her, which said : "Dear Ms Brown: This is to inform the Court that my answers to the defendants (Kishore and Palmour) interrogatories had been rejected by the defendants' attorney also my Renew Notice of Confirmation, however pursuant to CPLR 3140 #91 do not have to answer the defendants interrogatories again, which is as follows: Pursuant to CPLR 3140 #9 provides: Where in one of two actions for which joint trial had been directed, statement of readiness had been filed, defendants was not entitled to issuance of order directing plaintiff in other action to answer interrogatories. Rudolph v Bowling Corp.of Plainview, 1971, 67 Misc. 2d 463, 324 N.Y.S 2d 448. I do hope that this CPLR3140 #9 Rule of the New York Civil Procedure Law and Rules will clear-up all existing problems concerning the interrogatories of the defendants. On or around April 30, 1997 Kishore and Pal -mour made a motion to strike Ally's verified complaint Index# 21625/95 with prejudice or to prohibit Ally from supporting her claims and for an award of sanctions. Ally opposed this motion but a order dated May 28, 1997 dismissed the complaint with pre -judice. According to this order only the action Index #21625/95 was dismissed with prejudice, but the action Index#23087/95 was not dismissed, and certainly not on the merits, for this action was not merge into one action with Index #21625/95, it had its own note of issue and own index #. The costs and sanctions of $1,000 (One thousand dollars) was then paid to the defendants Kishore and Palmour's attorney Socrates Scott L. Nicholas, on July 8, 1997.

ACTION INDEX NO. 23514/97:CONTRACT AND TORT

A summons and verified complaint dated October 2,1997 was then filed in the Supreme Court, County of Queens, Index#23514 /97, Ally then joined all the respondents in this new joint tort feasors actions, for their wrong doings which is sounding in fraud, collusion, intentional, negligent, forcibly-entry, conversion illegal, willful, trespass, malicious, and tortious acts. But Mr Graver made a motion to dismiss the verified complaint pursuant to CP LR 3211(a)(1)(5) and(7) upon the grounds that the defense is founded upon documentary evidence, that the cause of action against the said defendant may not be maintained because of collateral estoppel, and Res Judicata and that the complaint fails to state a cause of action and for an order pursuant to 22NYCRR #130-1 and CPLR #8303-a imposing sanctions in the sum of $10,000 for commencing a frivolous cause of action.

Ally then made a cross-motion for summary judgment and dismissal of the main motion pursuant to CPLR3211(b) and on the grounds that (1). Pursuant to CPLR3211/10: An affidavit cannot qualify as "Documentary Evidence" to support a dismissal based on paragraph 1. (2) Under former C.C.P.1876 #2244: Collateral Estoppel and Res Judicata could be raised only by answer and not by motion to dismiss and the Res Judicata Rule is only when a final judgment is rendered on the merits, so far there is no final judgment on the merits, Collateral Estoppel Doctrin is Prior Judgment between same parties on different cause of action is an Estoppel, in this action the parties are not the same and the cause of action is not different from the other two actions. (3). Pursuant to CPLR 3013#6: Forms of action have been abolished, and the verified complaint verse #82 stated willfully, intentionally, knowingly, and negligently (without care), and for an order denying sanctions of $10,000.00 upon the grounds that my cause of action is not frivolous, my business and contents of the said business premises were destroyed, including all my household and personal property, so I am claiming the damages caused, against all the defendants. Ally also said in her Sworn Affidavit in support of her cross-motion that, "Inter-

locutory is interim, provisional, temporary, not final. Something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy. An interlocutory order or decree is one which does not finally determine a cause of action, but only decides some intervening matter pertaining to the cause, and which requires further steps to be taken in order to enable the Court to adjudicate the cause on merits. In re-Merle's Inc., C.A. was 481 F2d 1016, 1018. Affirmation in further support and in opposition to cross-motion dated November 7, 1997 was then filed by Richard S. Graver who said in verse #6, "In view of the foregoing, plaintiff's motion for summary judgment is prema ture." Sworn Affidavit in further support of Ally's cross-motion for summary judgment dated November 13, 1997 was then filed which said, "Pursuant to CPLR 3211(c): Evidence permitted, im -mediate trial, motion treated as one for summary judgment. Up on the hearing of a motion made under subdivision (a) or (b) either party may submit any evidence that could properly be con sidered on a motion for summary judgment. Whether or not issue has been joined, the Court, after adequate notice to the parties, may treat the motion as a motion for summary judgment. Even though Mr Graver did admit in his affirmation in support of motion to dismiss that, "the only factual allegation that ap- pear to be relevant to a claim Ally thinks she has against me is her allegation that I wrongfully prepared an execution which led to her eviction from the premises," yet, the order dated November 19, 1997 granted the motion, dismissed the complaint and denied the cross-motion. The parties are directed to appear before the court on December 18, 1997 at 9.30 am for a hearing on the issue of sanctions. At the hearing on December 18, 1997. The Court asked the defendant Graver as follows:On P3:3-8: "Mr Graver was the attorney for Kishore and Palmour in that action which resulted in a 1994 interlocutory judgment of ejection in favor of Kishore and Palmour against Ackleema Ally; is that correct?" Mr. Graver said, "Yes, it is." On P3:16-25: The Court also said, "Ms. Ally commenced afterwards two separate actions in 1995 claiming damages for wrongful eviction. These were con solidated and dismissed by Hon. Herbert A. Posner with prejudice

on May 28, 1997, on the grounds that the plaintiffs (Ally) had failed to comply with the orders to disclose and that they persist -ed in making meritless and incomprehensible motions. Did Judge Posner do that?" Mr Graver answered, "Yes, Sir." On P4: 2-6, The Court then asked, "Were you forced to defend that, sir? Were you forced to defend it, oppose the motion?" Mr. Graver answered, "No, I was not the attorney on the motion."

On P5:14-15,The Court said, "What I propose to do, Miss Ally unless you convince me otherwise is levy a sanction against you based upon your conduct for bringing this action after it has been dismissed. Why should't I do it?" Ally asked, "Your Honor, can I explain to you? Can I have a chance to talk to you?" The Court said "That's what we're here for, so you can give me an explanation as to why I shouldn't sanction you, sanction means to punish you for bringing this action. On P6:2-25, Ally said, "I know." The Court said, "And bringing this action before me after it was dismissed by Judge Posner and other judges, and where you're harassing this lawyer by bringing this action against him. You tell me why I shouldn't sanction you." Ally said, "Yes, your Honor. Your Honor, I'm pro-se. I'm not good at arguing before a judge." The Court said, "It doesn't give you right to bring baseless actions against the lawyer." Ally said, "What I'm asking for is guidance and a fair hearing. Your Honor, on your order, it stated that this action is essentially identical with the actions which were consolidated and dismissed with prejudice by Honorable Justice Posner." Before the plaintiff could continue, the Court said, "You know what with prejudice means? With prejudice means you cannot bring another action, and that was dismissed with prejudice." Ally then said, "But, your Honor, Justice Posner did not tell me I cannot make another claim against the defendant."

On P7:2-21: The Court said, "Yes, he did. Yes, he did. When he said with prejudice, that means this is the end." Ally then said, "But your Honor, that prejudice was not on the merits. It was because I did not produce my interrogatories. It was not on the merits of the case." The Court then said, "Madame, if you

had, if you had any grievance because the action was dismissed against you because you failed to disclose and the matter was dismissed with prejudice by Justice Posner, your remedy was not to bring another action; your remedy was to take an appeal, which you didn't do. Instead, you bothered this lawyer by bringing an action against him." Ally then said, Your Honor, he was not included on the other action. This is the first action against him, he as never included." The Court said, "He was not a defendant?" Ally said, "No." On P8:3-25 Ally also said, "Here is an order, your Honor, which was signed by Honorable Justice Lane, On this order---" The Court then said, "Let me see it." Ally then continued, "On this order, Mr Graver's name is not as a defendant. That was the consolidated order of two actions. He was never a defendant in any of the actions." The Court then said, "But don't you understand? You're suing him because he represented Ms. Kishore, correct?" Ally then said, "No, your Honor I'm suing him because he executed, he wrote up an execution ordering the sheriff to evict me, and he did not get a warrant from the Judge to do so, your Honor, that is the reason why I'm suing him, on account of his actions." The Court said, "Hold it." Ally said, "I was destroyed." The Court then said, "Did you hear what she said?" Mr Graver said, "Yes." The Court said, "What do you have to say?" Ally said, "Here is the execution order." On P9:3-25 & P10:2-13: Mr Graver said, "This judge issued an order ejecting her from the premises and under law I was entitled to and did prepare an order that Judge Posner signed directing the sheriff to give my client possession of the premises (no order was issued by Judge Posner to the sheriff) After she was evicted, this lady went to Civil Court to say she was wrongfully evicted; that proceeding was dismissed. That Judge found whatever I did was proper. I provid ed the Court with all the documents to show what I said." The Court then said, "He acted as a lawyer,." Ally then said, "Your Honor, the judge told me he had no jurisdiction over this case because the case was already in the Supreme Court. The dismis sal of the case was not on the merits." The Court said "You can't use the excuse to me--- You cannot use the excuse to me that you're a pro se litigant and therefore you didn't know the

law. You harassed this man. Ally said, "I did not, your Honor. This is the first I'm bringing against him." The Court said, "You brought an action against him. He did his lawful duty issuing a warrant to the sheriff. He had every right to do so. You never took an appeal from any of these things; instead, you bring other actions. You lost the ejection action. He had a right to issue a warrant. He Issued the warrant. You sued him. You went to Civil Court for review. They turned you down there. Now he's asked me to order you to pay him sanctions.

On P13:2-25 & P14:2-6, The Court said, "Ma'am,I heard every thing I had to hear. You're telling me, you're telling me that you lost, but you lost unjustifiably and you want to bring an action against him-." Ally then said, "But, your Honor, pursuant to the CPLR, a warrant cannot be issued by an attorney, only by a Judge, but this attorney took it in his hands to make an execution order, give it to the sheriff. How do I know he's not involved in removing my stuff from the store?" The Court then said, "Let me explain something to you: There's an old saying that when you act as your own lawyer, your client is not the smartest person in the world. You think you know the law." Ally said, "No." The Court then said, "He has every right to Issue a warrant. He's an attorney. He's based his warrant upon an order of a judge of this Court. He did what he was supposed to do. Now, Madam, you are wrong, and you are harassing him. So what I'm going to do is issue a written decision. I'll tell you what's going to be in the decision:I'm going to order you to pay him, Mr Graver, $2,500 as a sanction. The order after the hear-ing said: "It is ordered that the defendant Graver shall recover of the plaintiff Ally the sum of $2,500 for costs pursuant to 22NYCRR 130-1.1." the Court continued to say, "The plaintiff Ally was given an opportunity at the hearing of December 18, 1997, to explain or justify her conduct, and could not do so, beyond restating her grievance. That grievance is meritless as a matter of law." The Court's order continued:"Even if they were not precluded by that judgment,this claim,as against the movant, is clearly meritless, as it is settled that an attorney may not be held liable to a third party for acts done in the course of his

representation of a client, in the absence of fraud, collusion or a malicious or tortious act." Because Ally's complaint was dismissed and the cross-motion was denied on account of the above verse, and that verse was not a ground for dismissal, Ally then made a motionto renew her cross motion for summary judg ment on the grounds of additional facts and Laws not previously considered in this action, in which Ally said that this action is a joint cause of action and the defendant (Graver) did not make a motion to have causes separately stated, therefore he did not fuse his respective claim,and that the presence of fraud, collusion malicious and tortious acts can clearly be seen, since the said defendant's actions are not only the existence of actionable wrong but the wrong caused damages. Ally then said: The elements of Fraud in an action,which include false representation of a present or past fact made by defendant, action in reliance there upon by plaintiff and damages resulting to plaintiff from such representation. Citizens Standard Life Ins.,Co. v Gilley, Tex. Civ. App. 521 S. W. 2d 354, 356. And Collusion is an agreement between two or more persons to defraud a person of his rights by the forms of law, or to obtain an object forbidden by law. It implies the existence of fraud of some kind, the employment of fraudulent means,or of lawful means for the accomplishment of an unlawful purpose. Tomiyosu v Golden, 81 Nev, 140 P.2d.415,417,so Ally do believe that the defendants-respondents did use the forms of law to destroy her business and all the contents of the said business premises, which include all of her household and personal property. Petitioner Ally also said in her sworn affidavit that pur suant to CPLR1002, complaint stating a separate cause of action against the defendant and a separate cause against another was not dismissed on defendant's motion to dismiss, but proper motion should have been to have causes separately stated. Trilliard v Horowitz 1955, 1 A.D. 2d 680, 146 N.Y.S. 2d 512. Ally continued to say that pursuant to CPLR 1502, in order to charge the sole property of those joint obligators who were named but not served in the first action, a new action must be commenced within six years from the entry of judgment in the first action. Hofferberth v Nash 1908, 191 N.Y.446, 84 N.E. 400. In the second action the first judgment is not res judicata, since this section

mandates that the second action proceed as though the first one had not been brought. Ally also said, "On May 17, 1996 an order was signed by Hon. Justice Posner which said, "The defen -dant is confusing the prior action (5610/91) with this new complaint for damages." Ally then said, "Interlocutory is provision -al, interim, temporary, not final etc. In re-Merle's Inc., C.A. as 481 F 2d 1016,1018. Ally also said that, malicious is a wrong ful act intentionally done without legal justification or excuse, an unlawful act done willfully or purposely to injure another. Ally then said, tortious is used to denote the fact that conduct whether of act or omission is such a character as to subject the actor to liability, under the principles of the law of torts. In the plaintiff Ally's sworn affidavit in support of her Motion to Renew she said, "To my knowledge the verified complaint did state a cause of action for verse #82 of my verified complaint stated, "Willfully, intentionally, knowingly and negligently (with-out care) for it was the defendant's illegal document that was used willfully, intentionally, knowingly, without care or negligently as an illegal instrument and infact a weapon to help to break the locks off my business premises without a warrant from the Court and before final judgment was granted to his clients which help ed to cause the destruction of Ally's business and all the contents within the business premises.

Affirmation in opposition to Ally's motion to renew was then filed by Richard S. Graver. Sworn Affidavit in further support to motion to renew, and in opposition to Graver's affirmation in opposition was then filed by Ally. Affirmation and memorandum of law was then filed by Susan Cruise attorney for Katsorhis and Martello and in opposition of plaintiff Ally's motion to renew. Sworn Affidavit and memorandum of law in further support of plaintiff Ally's motion to renew summary judgment and in opposition to affirmation of Susan Cruise. The order denied the motion and deemed it a motion to reargue, and Ally was directed to appear before the court on April 29, 1999 to show cause why further sanctions should not be imposed." The lower Court gave the City Sheriffs at least four (4) extensions of time to answer plaintiff's verified complaint and still they did not answer the

verified complaint. The first was given up to December 8, 1997, even though their papers were filed after the date requested by the summons,also, they did not serve any motion papers to the Ally when they requested that extension, Ally found the order and the motion papers in the file in the Court Records Office, after the extension was granted. Two more motions were granted to the City Sheriffs by the two orders dated November 23,1998

The return date for the motion to renew was on February 16, 1999, but Ms Cruise, the City Sheriffs attorney, turned up in court and asked for an extension of time and again it was granted to March 9, 1999, this is the 4th extension of time. The motion to renew was against Mr Graver but the lower Court allowed the City Sheriffs to answer the motion even though Ally asked the Court to reject their answer, because the record is reflecting continuous pattern of de-fault and neglect which is prejudiced to her, but the lower Court claiming that Ally has brought a new action against the New York City Sheriffs, when it is the same action against all the respondents. The Court then still allowed the City Sheriffs attorney to appear in Court in opposition on April 29, 1999, the defendant Mr Graver did not appear, and because of the way the Court started the hearing, the Ally got confused and she forgot all that she wanted to say.

However,at the hearing: On P2:13-25;P3:2-19 The Court said, "The record in this case shows that this plaintiff has brought a multiplicity of lawsuits against public officials;the actions having no merit and having been dismissed. There were a number of them, I don't know how many there were exactly, but in this particular case the court has dismissed the case. And further more I had a hearing in which I determined she was guilty of frivolous actions and I sanctioned her. I entered an order on that sanction, and I thought I would give her consideration by not entering an order. And lo and behold, the plaintiff, instead of being grateful for the fact that I didn't force her to pay the fines that I imposed upon her, brings another proceeding. And here I am." The Court said to Ms Cruise the New York City Sheriffs' attorney. "Now are you moving for sanctions, ma'am?" Ms Cruise said,

"Your Honor, I would support the Court's motion sua sponte. The City of New York, for sanctions, requires permission from its executive staff and executive management, which I did not request, but I do support the Court's motion sua sponte in that." The Court then said, "Mrs Ally, what have you got to say for yourself? Why do you bring these motions? I dismiss them." Ally said, "Your Honor, this action is very important to me. I was badly destroyed beyond repair. Next year I'll be a senior citizen. On P4:3-25; P4:2-7: I cannot start over again. I have been try -ing to do a legal business. I had three children that was going to school. And on account of the defendants I have been des -troyed. It has been 12—sorry, 11 years I've been in and out of court on account of these defendants. I have----." Before Ally could say anything else the Court said, "You have lost in court, and you have to accep t the Court's determination. Now listen to me. If you think that I was wrong, then you should appeal. You never did that. Instead, you came back to me again and again." Ally said, "Your Honor, I'm asking you for maybe 15, 20 minutes of your time, that is all. Give me a chance to explain my problem, I mean to answer your order to show cause. Unless you hear me out, your Honor, you will not be able to make a just decision here. I cannot start life all over again. I'm getting older. Do you think that the offices out there will employ someone 55 years of age when there are young 18 and 20 years that are just qualified from school? No, your Honor. It would be difficult for me to find a job out there. All I'm asking, this defendant des -troyed me. I'm not asking you to make me a millionaire. All I'm asking, you have destroyed me, compensate me for the dam -ages, because you wrongfully destroyed me.

On P6:5-25;P7:2-12: Ally meant to say, "Your Honor, you dismissed my case not because I did not state a cause of action, but because I brought an action against an attorney. This attorney did not make a motion to have the causes separately stated, this is a joint cause of action and not a joint action, there fore the said defendant did not fuse his respective claim." But, because I was so confused I said, "Your Honor, you dismissed my action because I brought in court against an attorney, not be-

cause I brought an action----because of my cause of action---I fail -ed to state a cause of action you dismiss me, my case, because I brought an action against an attorney. This attorney did not make a motion to have causes separately stated. This was a joint action. And by your order, your Honor which stated-sorry, your Honor. By your order dated November 19, 1997, this action is essentially identical with the actions which were consolidated and dismissed with prejudice, by Justice Posner. The plaintiffs are bound by that decision and cannot seek to circumvent it yet by bringing another action. Even if they were not so bound, this claim is barred by the 1994 judgment. Even if they were not pre cluded by that judgment, this claim as against the movant is clear ly meritless, as it is settled that an attorney may not be held li- able to a third party for accident (acts) in the course of his re- presentation of a client. In the absence of fraud, collusion, or malicious or authority was act---(tortious act). The Court said, "Mrs Ally, I ruled on that already." Ally said, "Your Honor." The Court said, "I decided that." Ally said, "Yes, Your Honor. But you only dismissed this action against the attorney. You did not dismiss this action against the other defendants." The attor- ney Mr Graver did not appear, however, a memorandum dated April 30, 1999 was signed which said, "The court orders that the plaintiff pay costs and sanctions in the total amount of $10,000. $5,000 of this shall be costs including attorney's fees, payable to Richard S. Graver. $5,000 shall be sanctions, on account of the motion as against the defendant City Sheriffs and on whose be- half the City of New York was compelled to defend. The sanc- tion shall be deposited with the clerk of the court for transmittal to the Commissioner of Taxation and Finance. A proposed Judg ment dated August 19, 1999 by Ally, was then entered, and for some reason could not be found in the Court.

APPEAL AND ORDER FROM THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT

When the judgment was found, Ally served and filed a Notice of Appeal dated December 15, 2000. A order was signed and en-

tered in the Appellate Court which said, that the judgment is affirmed with costs. The plaintiff's remaining contentions are not properly before this court on this Appeal.

APPEAL AND ORDERS FROM THE COURT OF APPEALS, STATE OF NEW YORK

Ally then filed a notice of appeal as of right, in the State of New York,Court of Appeals pursuant to CPLR5501(a)(1)(2)(3)(4) that all orders from the actions, starting from the action Index No. 5610/91 to the final action be reviewed as a whole thereof. The order said that the appeal is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitu tional question is directly involved. On July 3, 2003 Ally then filed a motion for permission to appeal to the State of New York Court of Appeals from the final judgment under CPLR 5501(a) and she did asked the said Court to review all orders starting from the action Index No 5610/91 as a whole thereof pursuant to CPLR 5501(a)(1)(2)(3)(4), because Ally asked the Court to review the interlocutory judgment, she produced the deposition which her attorney did not produce at the trial which was taken on July 2, 1991 of Mrs Hassan before the trial, who admitted that she prepared the lease and it was changed. A order was then signed which said that the motion is denied

VERIFIED COMPLAINT DOCKET NO. CV-03-5380 WAS FILED IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

A summons and verified complaint with attached exhibits was then filed in the United States District Court, Eastern District of New York under Index CV 03 5380 on October 24, 2003 by Ally, a letter from Richard S. Graver to Hon. Judge Nina Gershon dated November 20, 2003, requesting that, "a conference to be scheduled for the purpose of helping the plaintiff (Ally) under stand that it is in her best interest to discontinue this complaint with prejudice and refrain from commencing any further actions against these defendants." A letter dated December 1, 2003 was

mailed to Hon. Judge Nina Gershon from Ally in reply to Mr Graver's letter, but Hon. Judge Nina Gershon had already dismiss ed Ally's verified complaint for lack of subject matter jurisdiction A notice of Appeal was filed on December 22, 2003 and Notice of Corrected date of Notice of Appeal was also filed on December 26,2003.

APPEAL AND ORDER FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

A Amended Notice of Appeal was filed on May 19, 2004 in the United States Court of Appeals for the Second Circuit Docket # 04-0665-cv. Ally then filed her Brief and records on Appeal, and the defendants did not answer her briefs, she then appeared at the Thurgood Marshall United States Court house, at 40 Foley Square, New York City for a hearing, a Amended Summary order was filed on April 19, 2005 which affirmed the District Court's decision. Ally had an attorney who represented her in the action 5610/91 she did not know that that action was a contract and ejection action and not a landlord and tenant action, she treated all the actions as landlord and tenant, contract and tort actions.

Upon information and belief there is still no final judgment on that action Index #5610/91 between Ally and Kishore and Palmour. Ally then filed a petition for rehearing. Mandate was then received from the U.S. Court of Appeals for the Second Circuit and by order dated September 21, 2005 the petition for rehearing was denied. Statement of Income and Expenses for 1987. Full Record of all transaction was then prepared for writ of certiorari and Certification of Record.

REASONS FOR GRANTING THE PETITION

The reasons for granting the writ of certiorari are as follows:

1. So that this action can finally come to an end, since there is only an interlocutory judgment on part of this action, and no decision on the other part, there is also no final judgment.

2. The Supreme Court, Courty of Queens, Appellate Division, 2nd Judicial Department affirmed the Lower Court judgment with costs, which was made on an interlocutory judgment and not a final judgment, and only on part of this action, but said that the remaining contentions are not properly before that Court.

3. I believe that it is very important that the U. S. Supreme Court grant the writ of certiorari and make the final decision in this action which may be of some help to others, and guide the lower courts in making a just decision in actions similar to this one.

4. I believe that the Supreme Court, County of Queens decision was erroneous because(1). They made their ruling on an interlocutory judgment and not a final judgment, Res Judicata. (2). The complaint was dismissed by motion to dismiss and not by answer. (3). The Court said that the claim is meritless, that an attorney may not be held liable to a third party for acts done in the course of his representing a client in the absence of fraud collusion or a malicious and tortious act, Ally do believe that the evidence will show the fact that fraud, collusion, malicious and tortious acts can clearly be seen, and that the code of ethics of an attorney is that an attorney should not encourage his clients in the acts of fraud, malicious and tortious acts.

5. I am respectfully requesting that this Court review all the orders from the State Courts and the Federal Courts, and for the reasons above and other reasons, which may not be clear to her, since she is a pro-se, and grant the writ of certiorari in the name of Justice.

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW YORK
EASTERN DISTRICT

No.

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff,

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants

MEMORANDUM AND ORDER

GERSHON, United States District Judge:

Plaintiff files the present action pro se alleging that defendants put her out of business by wrongfully evicting her from her business premises. Plaintiff seeks damages of forth million dollars for the wrongfully "willful, fraudulent, intentional.....malicious and tortious acts of the defendants by reason of the willful violation of Section 853 of the Real Property Actions and Proceedings Law." Complaint at q 9. Plaintiff paid the filing fee to commence This action. Because this Court lacks subject matter jurisdiction over this action, plaintiff's verified complaint must be dismissed It is clear from plaintiff's fifty-seven page complaint that this matter has been heavily litigated in the courts of New York. Liti-

gation involving plaintiff's lease apparently began in 1988 as constructive eviction,changing of he locks, allegations of stolen property, nonpayment of rent and unlawful eviction. Complaint qq12-4 Most recently, plaintiff's appeal to the New York Court of Appeals seeking review of a lengthy list of decisions rendered by the Supreme Court of the State of New York, Queens County, in cases filed in the years 1991,1995,1997, was denied on the grounds that "no substantial constitutional question is directly involved."Id. at 8, qq 126-28.Plaintiff seeks to overturn the state courts' rulings in this prolonged and embitter ed landlord-tenant dispute. In reviewing plaintiff's complaint,the Court is mindful that because plaintiff is proceeding pro-se, her submission should be held "to less stringent standards than for -mal pleadings drafted by lawyers." Hughes v Rowe, 449 U.S.5,9 (1980). However, a plaintiff seeking to bring a lawsuit in federal court must establish that the court has subject matter jurisdiction over this action. See, e.g., Rene v Citibank N.A, 32 F.Supp. 2d 539,541-42 (E.D.N.Y.1999) (dismissing pro se complaint for lack of subject matter jurisdiction); United Foods & Commercial Workers Union, Local 919,AFL- CIO v CenterMark Properties Meriden Square, Inc. 30 F. 3d 298(2dCir.1994("Where jurisdic- tion is lacking....dismissal is mandatory.").

This Court lacks subject matter jurisdiction over this case for two

reasons. First, the "Rooker-Feldman doctrine"-named after two United States Supreme Court cases (Rooker v. Fid. Trust Co.,263 U. S. 413 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) - holds that lower federal courts do not have subject matter jurisdiction over cases that effectively seek review of state court decisions. Hachamovitch v. DeBuono, 159 F. 3d 687, 693 (2d Cir. 1998); Moccio v. New York State Office of Court Admin.,95 F.3d 197(2d Cir.1996). Since plaintiff is seeking review of the state courts' determinations in her land lord-tenant state court proceedings, this Court is without jurisdiction. Second, plaintiff's allegations are based on a landlord-tenant dispute. It is well-settled that the landlord-tenant relation-

ship is fundamentally a matter of state law. Hearn v. Lin, No.01-CV-8208, 2002 WL 720829 (E.D .N.Y. Feb. 14, 2002); See Mc Allan v. Malatzky, No. 97 CV 8291, 1998 WL 24369, at *2-3 (S.D.N.Y. Jan. 22, 1998) (no subject matter jurisdiction where plaintiff attempted to recloak his charges regarding a state housing court matter as a violation of his constitutional rights), aff'd, 173 F.3d 845 (2d Cir.1999); DiNapoli v DiNapoli, No.95 Civ. 7822, 1995 WL 555740,at *1(S.D.N.Y. Sept.19,1995) (federal courts do not have subject matter jurisdiction over land lord-tenant matters); Chiania v Broadmoor Associates, No. 94 Civ. 0613,1994 WL 30412, at *1(S.D.N.Y. Feb. 2, 1994)(where plaintiff's state court claims were litigated in a long and acrimonious landlord/tenant dispute and were merely "recloaked in constitutional garb,"the"constitutional"claim was insufficient to con fer jurisdiction).

The Court has considered allowing plaintiff to amend her complaint pursuant to Federal Rule of Civil Procedure 15 (a), Forman v Davis, 371 U.S. 178, 182, (1962), and finds it need not afford that
opportunity here as it would be futile.O'Hara v Weeks Marine,Inc 294 F.3d 55,69 (2d Cir. 2002). It is clear from the face of the complaint that this is a landlord-tenant matter and thus, even if plaintiff filed an amended complaint, the Court would lack subject matter jurisdiction.

Accordingly, plaintiff's complaint is dismissed for lack of sub ject matter jurisdiction. Fed. R.Civ.P.12(h). (3). The Court certifies pursuant to 28 U.S.C# 1915 (a) (3) that any appeal would not be taken in good faith and therefore in forma pauperis status is denied for purpose of an appeal. Coppedge v United States, 369 U.S. 438, 444-45 (1962)

SO ORDERED
Dated: Nov 24, 2003

BY THE COURT
Nina Gershon
United States District Judge.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW YORK
EASTERN DISTRICT

No. CV 03-5380

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff,

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS. DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants

CIVIL JUDGMENT

Pursuant to the Order issued Nov24, 2003 by the Honor able Nina Gershon, United States District Judge, dismissing the complaint for lack of subject matter jurisdiction, it is.

ORDERED, ADJUDGED AND DECREED: That the com plaint is hereby dismissed. The Court certifies pursuant to 28 S.C. #1915 (a)(3) that any appeal from the Court's order would not be taken in good faith.

Dated: Nov.24, 2003

Nina Gershon
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW YORK
EASTERN DISTRICT

No. CV 03-5380

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff,

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants

JUDGMENT

A Memorandum and Order of Honorable Nina Gershon, United States District Judge, having been filed on November 26, 2003 dismissing plaintiff's complaint, for lack of subject matter jurisdiction; certifying pursuant to 28 U.S.C. # 1915(a)(3) that any appeal from the Court's Memorandum and Order would not be taken in good faith; and denying informa pauperis status for purpose of an appeal; it is

ORDERED and ADJUDGED that plaintiff take nothing of the defendants; that plaintiff's complaint is dismissed, for lack of subject matter jurisdiction; that any appeal from the Court's Memorandum and Order would not be taken in good faith, pursuant to 28 U.S.C.#1915(a)(3); and that in forma pauperis status

is denied for purpose of an appeal.

Dated: December 3, 200 Robert C. Heinemann
Clerk of Court

APPENDIX D

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

[Filed April 19,2005]

No. 04-0665-cv

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff-Appellant

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants-Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW YORK
(D.C.No. 03-cv-5380)

AMENDED SUMMARY ORDER

Before FEINBERG, SACK, KATZMANN, Circuit Judges.

This summary Order will not be published in the Federal Report er and may not be cited as precedential authority to this or any other court, but may be called to the attention of this or any other court in a subsequent stage of this case, in a related case, or in any case for purposes of Collateral Estoppel or Res Judicata.

UP DUE CONSIDERATION, IT IS HEREBY ORDERER, ADJUDGED AND DECREED that the judgment of the district court be, and it hereby is, AFFIRMED.

Background

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STATEMENT OF THE SUBJECT MATTER AND APPELLATE JURISDICTION

BASIS FOR THE SUBJECT MATTER JURISDIC TION IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK,

The plaintiff-Appellant Ackleema Ally filed her verified com-Plaint with attached exhibits on October 24, 2003 in the Eastern District Court under original proceeding, which is, pursuant to Article 111 of the Constitution it refers to cases that are heard before a court for the first time where both law and facts are at issue, the nature of the suit is Constitutionality Statutes; other Statutory Actions, and on the basis of Federal Question Jurisdiction. Let the cover sheet show the fact. R61; D#1. The Cause of Action was filed under the U.S. Civil Statute of FPLR (should be U.S.C.A)26#2671, etc., (18#2111-2112; 18/1006; 28/547,564,566) but on account of the plaintiff-appellant's pro-se status, she did not know at the said time when she filed her verified complaint that federal question Jurisdiction was under 28 U.S.C.A. #1331.

The plaintiff-appellant Ally do believe that the U. S. District Court for the Eastern District of New York does have subject Matter jurisdiction over her claim because the Eastern District Court covers the Queens New York District, and is a federal court and this lawsuit is based on the violation of Federal Laws, which are called "Federal Question case," and the violation of the Constitutional rights of the plaintiff Ally, which occurred in Queens, New York and also the claim in damages are in excess of $75,000 (Seventy five thousand dollars). The plaintiff-appellant Ally is claiming damages of approximately $40,000,000 (Forty Million Dollars).(R63:9) because she believes that all the defendants were the fruit of willful, illegal, fraudulent, burglary, intentional, deliberate, conversion, forcible entry, destruction, trespass, negligent collusion, malicious and tortious acts; violation of Section 853 of the Real Property Actions and Proceedings law, which impair the

obligation of her contract; violation of plaintiff's right to due process of the law; violation of the Bill of Rights, of the 4th Amendment, of the 14th Amendment, of the 5th Amendment the Taking Clause, and violation of the equal protection rights of the plaintiff-appellant under U.S.C.A. Const. Amend. 14. and violation of plaintiff's peace of mind which caused extreme emotional distress to Ackleema Ally (R.62-64:8-118)

The evidence in this action will prove the fact that the plaintiff Ackleema Ally was illegally evicted and that the defendants Kishore and Palmour (new landlords and plaintiffs of action 5610 /91) did constructively evicted the tenant (plaintiff Ally) from her business premises (R137-138, 158-164), and that the defendants did break the locks, entered the store and removed some of the items from the store premises (185-186); and that the original landlord Nazmoon Hassan admitted at the deposition that she prepared the one year lease and it was changed (R.362:355-356). The evidence will also prove the fact that the attorney Richard S Graver fraudulently prepared an execution (R171), authorizing the City Sheriffs to evict the plaintiff Ally without a warrant or authorization from the Court and the said attorney also admitted that he wrongfully prepared an execution whichled to plaintiff Ally's eviction.

The evidence will prove the fact that the City Sheriffs fraudulently prepared a 72 hour Notice (R173) and made false representations (Fraud), when they said, on the 72 hour notice that, "a final order was made, awarding the plaintiffs (now defendants Kishore and Palmour) possession of the premises occupied by you (Ally), and that a order has been issued commanding the sheriff to remove you (Ally) and put the plaintiffs (now defendants Kishore and Palmour) in possession. Let the evidence show the fact that a final order was not issued from the Court, it was only an interlocutory judgment. The City Sheriffs again prepared a fraudulent form 064 (R190) and again made false representation when they said, "Pursuant to an order of possession/execution to deliver real property issued out of Supreme

Court, Queens County, to the Sheriff of the City, New York County Division." Let the evidence show the fact that no order of possession/execution to deliver real property was issued out of the Supreme Court, Queens County to the City Sheriffs, it was an execution which was prepared by the defendants Kishore and Palmour's attorney Richard S. Graver who admitted that he wrongfully prepared an execution which led to plaintiff Ally's eviction from her business premises. And the City Sheriffs did admit that they evicted the plaintiff Ally when they said that "We have this day of December 14, 1994 given possession of premises 103-25 127Street to Chandra Kishore(original plaintiffs now defendants)".

The evidence will also prove the fact that the plaintiffs Kishore and Palmour(now defendants)were seen many times destroying and removing the contents which include all of the plaintiff-appellant Ally's personal and household property from her business premises(R191;209-210;212-215). So on account of the wrongful actions of all the defendants the plaintiff-appellant Ally lost her business premises, business, and all the contents (stocks, machinery, equipments, fixtures, fittings, etc)of the said business premises, which also include all of her household and personal property, it was very sad and heart breaking for her to see all that she had accumulated all her life were willfully and maliciously destroyed and removed except for 2 pairs of shoes, a few pieces of clothing and her case materials, which she had with her(R81:81;82:83;87-88:100). After plaintiff Ally was evicted, she made many, many requests for the contents of the business premises, but the defendants refused to give them to her, the Courts nor the police help to save them, which was very sad And heart breaking. Actions were already brought in the State Courts, but instead of appellant Ally being compensated for the wrongs that was done, she was sanctioned by the lower courts (R31-33;39-40) the Supreme Court of the State of New York, Appellate Division, Second Department affirmed the decision of the lower court on part of the action, but said that the other part are not properly before that Court(R23),a notice of appeal

was then filed in the State of New York Court of Appeals which was dismissed (R118) and a motion for permission to appeal then to the State of New York Court of Appeals, which was denied (R119), so since a final decision was not made on the whole of this action, plaintiff Ally then filed her verified complaint with attached exhibits in the United States District Court for the Eastern District of New York, with a hope that this Court will make the final order or final judgment in this action, which will bring this action to an end. But, a Civil Judgment with Docket # 03-cv-5380 pursuant to the Memorandum and order dated November 24, 2003 was entered on November 26, 2003, a Civil Judgment with Docket# 03-cv-5380 dated November 24, 2003 was entered on December 1, 2003, and a judgment with Docket#03 cv-5380(NG) dated December 03,2003 was entered on December 2003 of Honorable Judge Nina Gershon of the United States Eastern District Court (R399-407). The said Civil Judgments, memorandum and order, and judgment dismissed plaintiff-appellant's verified complaint for lack of subject matter jurisdiction, and certifies pursuant to 28U.S.C.A#1915(a)(3) that any appeal from the Court's Memorandum and Order would not be taken in good faith; and that in forma pauperis status for purpose of an appeal is denied.

Pursuant to U.S.C.A #28:1331:- The district courts shall have original jurisdiction of all civil actions arising under the Constitution laws, or treaties of the United States. Pursuant to U.S.C.A#28:1343(a)(1)(2)(3):- The District Courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: (1). To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42; (2). To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent; (3). To redress the deprivation, under color of any State Law, statute, ordinance, regulation, custom or

usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

And, pursuant toU.S.C.A#28:1442(a)(3): A civil action or crim -inal prosecution commenced in a state court against any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending; (3). Any officer of the Courts of the United States,for any Act under colour of office or in the performance of his duties. Pursuant to U.S.C.A #28:1331:174 which said that." When complaint alleges that a municipality or other government entity itself acts in violation of t he Constitution, sub ject matter jurisdiction is present under this section if the jurisdic tion amount is met. Dr. Martin Luther King Jr. Movement Inc., v City of Chicago, D.C Ill 1977,435 F. Supp. 1289. Pursuant to USC#28:1331:- Provision of former #41(1) of this title, giving federal district courts jurisdiction of suits of civil nature where matter in controversy exceeded, exclusive of interest and costs, the sum of $3,000and arose under Constitution or laws of United States and #1983 of Title 42 granting jurisdiction of suits by any person to redress the deprivation, under color of any law, statute, or ordinance,of any right, privilege or immunity secured by Con stitution of United States had to be read together and neither was to be interpreted as abolishing the other. Hague v. Committee for Industrial Organization, N.J.1939, 59 S.Ct.954, 307 U.S. 496, 83 L.Ed 1423. Pursuant to U. S.C .A #28:1332:- The district courts shall have original jurisdiction ofall civil actions where the matter in controversy exceeds the sum or value of $75,000. The claim for damages inthis action is approximately$40,000,000(For ty Million Dollars). And pursuant to U.S.C.A#28:1331:150 which said that. "Federal district court had subject matter jurisdiction over discharged village police chief's action against village and police committee, in view of fact that complaint alleged violation of police chief's right to due process under U. S. C. A. Const. Amend 14, and amount in controversy was in excess of $10,000.

Starke v Bergles, D.C. Wis. 1978, 444 F. Supp. 469. Pursuant to U.S.C.A#28:1331 which said that, "Federal district court had subject matter jurisdiction over plaintiffs' complaint against city, its officials,agents and employees, which complaint alleged claim against municipal defendants arising under U.S.C.A. Const. Amend. 14 and_ sought both injunctive relief and damages in excess of $10,000. American Civil Liberties Union v City of Chicago, D.C.Ill.1976, 431F.Supp.25., and the claim for damages in this action is approximately $40,000,000.00 (Forty Million Dollars). However, pursuant to FPLR 12#341 which said that." Complaint should not be dismissed for lack of subject-matter jurisdiction, if it reveals that any ground for jurisdiction exists. Jorsch v Le Beau, D. C. Ill . 1978, 449 F. Supp. 485. Also, pursuant to FPLR12#610 which said that, "A complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of a claim that would entitle him to relief and if plaintiff is filing pro-se, court should construe complaint broadly, and not hold it to the same standards as complaint drafted by an attorney. Young v Calhoun S.D.N.Y. 1987, 656 F. Supp. 970. The appellant Ally did produce all the evidence and facts necessary to prove her claim. And also pursuant to FPLR 12#610 which said that, pro-se complaint alleging deprivation of rights under color of state law should not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Hudspeth v Figgins, C.A.Va.1978, 584 F.2d 1345, certiorari denied 99 S.Ct. 2013,444 U.S.913, 60 L.Ed 2d.386. The plaintiff-appellant Ackleema Ally believes that she did produce all the evidence and facts necessary to prove her claim. Pursuant to the Memorandum and Order, Civil Judgment and Judgment issued by Hon. Judge Gershon which said that, "The Court certifies pursuant to 28 U. S. C. #1915(a)(3) that any appeal would not be taken in good faith and therefore informa pauperis status is denied for purpose of an appeal. Coppedge v United States, 369 U. S. 438, 444-45 (1962).

The plaintiff-appellant paid the filing fee in commencing this action and is not moving for in forma pauperis status to file her appeal, how ever, Pursuant to FPLR 12#952 which said that, "Where plaintiff filed suit in District Court in 1950 alleging among other things, tradename and trademark infringement, and final adjudication by Supreme Court of United States was not secured until 1956 and plaintiff acted in good faith in pursuit of his alleged rights as evidenced by retention of prominent legal council and there was extended legal communications between plaintiff and defendant showing that plaintiff did not intentionally sleep on his rights or lull defendant into a false sense of security, and plaintiff was persistent in seeking relief through courts, plain tiff was not guilty of laches and complaint was not subject to dis missal on that ground. Mas v Owens-Illinois Glass Co., D.C. Pa. 1958, 167 F. Supp. 657. Pursuant to FPLR 12#1228 which said that, "Considering unfamiliarity with legal requirements and evi dent good faith in attempting to comply with order granting mo- tion for more definite statement, plaintiff appearing pro-se was entitled to another opportunity to comply as opposed to dis missal. Schaedler v Reading Eagle Publication, Inc., C.A.Pa.1967, 370 F 2d 795.

BASIS FOR JURISDICTION IN THE UNITED STATES COURT OF APPEALS, FOR THE SECOND CIRCUIT,

The plaintiff-appellant Ackleema Ally's verified complaint with attached exhibits as evidence was filed on October 24, 2003 (R61-383;D#1) in the U. S. Eastern District Court under original pro- ceeding, a letter (R399;D#13) from defendant Graver to Honor- able Judge Nina Gershon dated November 20, 2003 was received by plaintiff Ally on November 28, 2003, a letter dated December 1, 2003 (R408; D#7) was mailed to Honorable Judge Gershon from plaintiff Ally in reply to defendant Graver's letter, but Honorable Judge Nina Gershon had already dismissed plaintiff-ap- pellant Ally's verified complaint by a memorandum and order dated November 24, 2003 (R#401; D#2) which was entered on November 26, 2003 and received by plaintiff on

December 6,2003,which said, "plaintiff's complaint is dismiss ed for lack of subject matter jurisdiction. Fed.R.Civ.P.12(h)(3).The Court certifies pursuant to 28 U.S.C# 1915(a)(3)that any appeal would not be taken in good faith and therefore informa pauperis status is denied for purpose of an appeal. Coppedge v United States, 369 U.S. 438,444-45(1962),a civil judgment was entered on November 26, 2003 (R404), and another civil judgment was entered on December 1 2003, (R#406; D#3), which said, "That the complaint is hereby dismissed. The Court certifies pursuant to 28 U.S.C#1915(a)(3) that any appeal from the court's order would not be taken in good faith." then a final Judgment 03-cv-5380(NG)dated December 3, was entered on December 4.(R407; D#4)which said. "A Memorandum and Order of Honorable Nina Gershon, United Stated District Judge, having been filed on November 26,2003,dismissing plaintiff's complaint, for lack of subject matter jurisdiction; certifying pursuant to 28 U.S.C#1915(a)(3) that any appeal from the Court's Memorandum and Order would not be taken in good faith, and denying in forma pauperis status for purpose of an appeal; it is Ordered and adjudged that plaintiff take nothing of the defendants; that plaintiff's complaint is dismissed, for lack of subject matter jurisdiction; that any appeal from the Court's Memorandum and Order would not be taken in good faith, pursuant to 28 U.S.C# 1915(a)(3); and that in forma pauperis status is denied for purpose of an appeal.

The plaintiff-appellant Ally's Notice of Appeal was filed on December 22, 2003and is from a memorandum and order, 2(two) civil judgments, and final judgment that disposes of all claims with respect to all parties,by Honorable Judge Nina Gershon. An amended Notice of Appeal was filed on May 19, 2004The plaintiff-appellant Ally brought this action before the United States District Court as a new action and because she believes that the Eastern District Court does have subject matter jurisdiction to decide her case, she paid the filing fee in commencing the action and is not moving for informa pauperis status to file her appeal, however, Pursuant to FPLR 12#952 which said that, "Where plaintiff filed suit in District Court in 1950 alleging among

other things, tradename and trademark infringement, and final adjudication by Supreme Court of United States was not secured until 1956and plaintiff acted in good faith in pursuit of his alleged rights as evidenced by retention of prominent legal council and there was extended legal communications between plaintiff and defendant showing that plaintiff did not intentionally sleep on his rights or lull defendant into a false sense of security, and plaintiff was persistent in seeking relief through courts, plaintiff was not guilty of laches and complaint was not subject to dismis -sal on that ground. Mas v Owens-Illinois Glass Co., D. C. Pa. 1958, 167 F. Supp.657.

Pursuant to FPLR12 #1228 which said that, "Considering unfamiliarity with legal requirements and evident good faith in attempting to comply with order granting motion for more definite statement plaintiff appearing pro-se was entitled to another opportunity to comply as opposed to dismissal. Schaedler v Reading Eagle Publication Inc., C.A. Pa. 1967, 370 F 2d 795. The plaintiff-appellant Ally is claiming damages of approximately $40,000,000(Forty Million Dollars) for this is an action sounding in fraud, burglary, intentional, deliberate, conversion, forcible entry, destruction, trespass, negligent, collusion, willful, illegal, malicious and tortious acts, violation of Section 853 of the Real Property Actions and Proceedings law, which impair the obligation of her contract; violation of plaintiff's right to due process of the law; violation of the Bill of Rights, of the 4th Amendment of the 14thAmendment,of the 5thAmendment the Taking Clause and violation of the equal protection rights of the plaintiff-appellant under U.S.C.A. Const. Amend.14 by one attorney, one City Sheriff and his deputy, and the original plaintiffs (now defen dants), let the record show the facts, that the property of the plaintiff-appellant Ackleema Ally was taken without due process or just compensation.

A judgment was entered by the Supreme Court of the State of New York, Queens County (R329)and the Supreme Court of the State of New York,AppellateDivision,Second Judicial Department

entered a decision and order (R333) the order affirmed the first part of the Action #5610/91(interlocutory judgment), and said that plaintiff's (Ally) remaining contentions are not properly before this Court on this Appeal (that is the part against the attorney, the City Sheriffs,and the other defendants). The plaintiff-appellant Ally do believe that the U.S. District Court for the Eastern District of New York does have subject matter jurisdiction over her action and The United States Court of Appeals for the Second Circuit do have jurisdiction to review, since this law suit is based on the violation of Federal Laws and the violation of the Constitutional rights of the plaintiff-appellant Ally,which occurred in Queens,New York and also the claim in damages are in excess of $75,000.00, therefore, in justification of this new action, and the judicial review, the plaintiff-appellant cites the Supremacy Clause in Article VI of the U.S. Constitution which declares that, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land: and the Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the Contrary notwithstanding.

Pursuant to U.S.C.A#2106:The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review,and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances. Pursuant to U.S.C.A #28:1331:- Where state officials, purporting to act under state Authority, invade rights secured by U.S.C.A. Constitution ,they are subject to process of federal courts in order that persons injured may have appropriate relief. Hoffman v Stevens. D. C. Pa 1959, 177 F. Supp. 898. Pursuant to FPLR 12 #1861 which said that, "Court may resort to material outside the pleadings in passing on a motion to dismiss for lack of subject matter jurisdiction.Mims v

Kemp. C.A.S.C.1975,516 F. 2d 21. The defendants did not make a motion to the Court to dismiss for lack of subject matter jurisdiction, they wrote a letter to the Judge. Pursuant to U.S.C.A #28:1331:211:-An allegation that a city intended forcibly to remove a transmission wire belonging to complainants, who had a perpetual franchise to use the streets, and thereby to deprive com plainants of their property without due process of law and to impair the obligation of their contract, presented a substantial claim under the Constitution,sufficient to sustain the jurisdiction of the United States Court. South Covington & C. St.Ry. Co. v City of Newport, KY.1922, 42 S.Ct. 418, 259 U.S. 97, 66 L.Ed; 842. And the defendants did deprive complainants of her busi-Ness and property without due process of law, and without just compensation. And, pursuant to U.S.C.A #28:1331:215:- Question of whether property was taken without due process or just compensation constitutes a "Federal Question" within Jurisdictional statute. Jim Young Development Corp.v State Highway commission of Mo., D.C. Mo. 1971, 56 F.R.D38.

Pursuant to U.S.C.A#28:1331:247:- If state legislation impaired the obligation of a contract or deprived of property without due process of law, or denied the equal protection of the laws, remedies were found in former #41 (1) of this title. Holt v Indiana Mfg. Co.,Ind. 1900, 20 S. Ct.272, 176 U.S.68, 44 L.Ed.374. Pur suant to U.S.C.A#28:1331 which said that, "Where a city, in the exercise of delegated state powers, transgresses the federal Constitution, the federal courts have jurisdiction, though the act is not authorized or may have been forbidden by the state. Portland Ry.,Light & Power Co.v City of Portland, D.C.Or. 1914, 210F. 667

By reason of the foregoing, the plaintiff-appellant Ackleema Ally do believe that the U.S. Court of Appeals do have jurisdiction over her claim. We the people of the United States come to the Courts in the name of Justice, to us a wrong was done, we do not know if we did a wrong to the defendants, because we do not know the laws and the rules, but to us a wrong is done to us, when the people who are supposed to protect us, destroys our

life, liberty, peace of mind, property without due process of the law, deny us the equal protection of the law, impair the obligation of our contract, and deny us just compensation of our pro perty which they destroyed and removed, then where do we the people go in the name of Justice. So we come to the Court out due process of the law, deny us the equal protection of the law, impair the obligation of our contract, and deny us just compensa tion for our property which they destroyed and removed, then, where do for justice, we appeal to the Courts give us Justice and give us liberty we tell our story to the Courts, asking them, you tell us did we do a wrong to the defendants or did the defendants do wrong to us? But what we do know is that the 5[t] Amendment said, "Nor no person be deprived of life, liberty or property, without due process of the law; nor shall private property be taken for public use without just compensation, and the 14th Amendment said, "Nor shall any State deprive any person of life, liberty, or property, without due process of the law; nor deny any person within its jurisdiction the equal protection of the laws. By reason of the foregoing the plaintiff-appellant Ackleema Ally respectfully requested that all orders and judgments in this action and the previous actions before the lower Courts be reviewed by this Court on the grounds of the merit of the facts, the exhibits as evidence, the law, the Constitutional right, the Constitutional protections, the Constitutional liberty and freedom, together with protection under due process law clause of the 4th, 5th,and 14thAmendment rights of the appellant, and from each and every part thereof as a whole thereof, and for such other and further relief as this Court deems just and proper.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The plaintiff-appellant Ackleema Ally believes that she does Have a prima facie case for there is no genuine issue of material facts only the issue of Law, for her verified complaint which attest to the truth of the facts, and the attached prima

facie exhibits as evidence in this action, will show this Court that the defendants, the attorney Richard S. Graver, the City Sheriff Kerry J. Katsorhis, his deputy Martello, and the other defendants Chandra Kishore and Prabha Palmour, a/k/a Ralph Sukhoo and Rosaline Sukhoo have violated the constitutional rights of the plaintiff-appellant Ackleema Ally. On account of the wrongful actions of all the defendants the plaintiff-appellant Ally was deprived of her property without due process of the law, she was also illegally evicted from her business premises which impair the obligation of her contract, actions were also brought in the Courts, but the plaintiff-appellant Ally was denied the equal protection of the laws and her property was taken without just compensation.

The issues to be reviewed are:

1. Whether the plaintiff-appellant Ally was deprived of her property without due process of the law?

2. Whether the plaintiff-appellant Ally's property was taken without just compensation?

3. Whether the plaintiff-appellant Ally was denied the equal protection of the laws?

4. Whether the illegal eviction of plaintiff-appellant Ally from her business premises impair the obligation of her contract?

STATEMENT OF THE CASE

(Numerical references preceded by "R" are to the Record on Appeal, and "D"to the Docket #)

This is an action to collect money damages of $10,000,000 (Ten

Million Dollars)and demands treble damages totalling the sum of ($30,000,000.00)for the willful Violation of Section 853 of the Real Property Actions and Proceedings law; for the Destruction of plaintiff's business and all the contents of the said business premises which include all of her household and personal property; and for punitive damages; financial business loss, loss of income; loss of future income; emotional upset and distress; fees together with costs and disbursements and interest thereon and for such other and further relief that this Court deems just and proper. This action was brought to The United States District Court for the Eastern District by plaintiff-appellant Ackleema Ally pursuant to Article 111 of the Constitution. The nature of the suit is Constitutionality Statutes; other Statutory Actions, and on the basis of Federal Question Jurisdiction. The verified complaint asserts causes of action sounding in fraud,burglary, intentional, deliberate, conversion, forcible entry, destruction, trespass, negligent, collusion, willful, illegal, malicious and tortious acts; violation of plaintiff's right to due process of the law. Violation of the Bill of Rights, Violation of the 4th Amendment Violation of the 14th Amendment,Violation of the 5thAmendment the Taking Clause, and Violation of the equal protection rights of the plaintiff - appellant Ackleema Ally under U.S.C.A. Const Amend.14,by one attorney Richard S. Graver one City Sheriff Kerry J. Katsorhis, his deputy Martello,and the original plaintiffs Chandra Kishore and Prabha Palmour a/k/a/ Ralph Sukhoo and Rosaline Sukhoo (now defendants).

This action was commenced by filing of a summons and verified complaint with attached Exhibits on October 24, 2003,(R61; D#1). A letter dated November 20, 2003 (399;D#13) of which a copy was received by the plaintiff Ally on November 28, 2003 was sent to Honorable Judge Nina Gershon by the defendant Richard S. Graver who requested that a conference be scheduled for the purpose of helping the plaintiff-appellant Ally understand that it is in her best interest to discontinue this complaint with prejudice and refrain from commencing any further actions against these defendants (R399).

In reply to that letter plaintiff-appellant Ally wrote to Honorable Nina Gershon, (R408; D#7) but Judge Gershon had already dismissed the verified complaint by memorandum, order, (R401; D#2), Civil judgments and judgment dated November 24, 2003 which dismissed Ally's verified complaint for lack of subject mat ter jurisdiction, and certifies pursuant to 28 U. S. C# 1915(a)(3) that any appeal from the Court's memorandum and order would not be taken in good faith; and that in forma pauperis status for purpose of an appeal is denied.

The plaintiff-appellant Ackleema Ally respectfully submit this brief in support of her appeal from the Civil Judgment 03-cv-5380 entered November 26, 2003, the Memorandum and order 03-cv-5380 entered November 26, 2003; from the civil judgment 03-cv 5380 entered December 1, 2003; from the judgment 03-cv- 5380 (NG) entered December 4, 2003 of the United States District Court for the Eastern District by Honorable Judge Nina Gershon and pursuant to that all orders from the lower courts be Reviewed

STATEMENT OF THE FACTS

The record: which consists of a verified complaint with attach ed exhibits will show this Court the facts that the pro-se plaintiff -appellant Ackleema Ally and Kamaral Hassan co-owner signed said agreement and/or contract of lease on April 18,1986 Kamaral Hassan as landlord and Ackleema Ally as tenant to use and occupy said premises as a commercial business and to do business as Ahmad Meat Market. (R.66:16;122). The said contract of lease provided for a tenancy of 11years with an annual rent of $4,800 ($400.a month) and the said lease shall become effective as of April15, 1986(R66:17;122). Ally entered upon the premises in April of 1986 and thereafter constructed a nd developed said premises to be used as a Halal Meat Market and ancillary products store.(R66:18). On or around March 1987 Kamaral Hassan died. (R67:19). On November 5th, 1987 Chandra Kishore and Prabha

Palmour (defendants) under the name of Ralph Sukhoo and Rosaline Sukhoo went into contract of sale of the said building with Nazmoon Hassan (R67:21;124). On January 29, alterations were made on the said contract, the names Ralph Sukhoo and Rosaline Sukhoo (defendants) were scratched off and Chandra Kishore and Prabha Palmour (defendants) were written over them, still with the same clause as above "Rear store and front apartment shall be delivered vacant and broom clean on title." (R67:22;125). On March 10, 1988 the original landlord Nazmoon Hassan (Kamaral Hassan's wife) violated Section 853 of the Real Property Actions and Proceedings Law in that they did illegally and unlawfully evicted plaintiff Ally from the subject premises, they broke and changed the locks without serving any eviction notice (R67:23).

On March 16,1988 Chandra Kishore, Prabha Palmour (defendants) and the original landlord Nazmoon Hassan went into the closing of the sale of the said building and the plaintiff-appellant Ally's store was not vacant and broom clean as stated in the Contract of sale, the plaintiff Ally was still the legal tenant under the tenancy of her lease,all her possession, equipments, personal property, stocks, and all the contents of the said business were still on the premises.(R69:25;126). The defendants Kishore and Palmour were customers of plaintiff Ally and they knew that Ally was the legal tenant at the rear store of the sub ject premises and the defendants also knew that Ally had use and occupancy of the said store when they signed the contract of sale. (R69:27:127). On June 30, 1988 appellant Ally was granted temporary possession of the said premises, by Honor able Judge Rutledge of the Landlord and Tenant Court, entitling the tenant (plaintiffAlly)to break the locks and enter the premis es with the help of the police because the Marshall and the new Landlords (defendants Kishore and Palmour) refused to put her back into the premises. Judge Rutledge told the landlords that if they would not accept the lease and do not want Ally as a tenant,they will have to tart a new proceeding to get her out, since they went into closing when she was the legal tenant,and if they

accept her rent then they will start a landlord and tenant relation ship. (R69:28;128). During the month of October 1988 plaintiff Ally bought approximately $8,405.00 in stock for the store and in November water started to pour down from the above apartment and damaged all the stock that was in the store premises, since that apartment was not occupied by any tenant she informed the said landlords(defendants)about the damages and they said they do not care.(R70:30;). Plaintiff Ally argued, in summary jud gment for rent,tenant was entitled to setup counterclaim for dam ages from leakage from pipes under landlord's control, based on breach of covenant to make repairs. Coleman Holding Corp., v Altman, 1934, 150Misc.724, 270N.Y.S.81 (R70:31). On Novem-Ber 29, 1988, the plaintiff Ally was permanently restored to possession and the new landlords were again told by Judge Rutledge that if they want the plaintiff Ally out, they will have to start a new proceeding, since they went into closing when the plaintiff Ally was still the legal tenant, if they did not want her as a tenant, then, they should not go into the closing of the sale of the property until she remove from there, he also told the new land lords that if they accept her rent, then they will start a landlord and tenant relationship. (R70:32;).

Upon information and belief,the defendants purchased the said premises subject to the plaintiff Ally's existing tenancy because they saw the contents of her store still in there when they inspected the store before the closing of the sale of the building. (R69:26). Commencing from the date that the defendants took possession of the said building, they have failed, neglected and refused to repair the subject premises so that plaintiff Ally can continue in her business as a retail meat, grocery and ancillary products store. (R70: 33). Please see photographs of the outside of plaintiff Ally's store, which was taken during the first week of January 1989 before the scaffold was put up by the defendants Kishore and Palmour (R70:34;136). Since the date that the defendants obtained title to the subject premises they have caused to remain open a notorious and dangerous and defective, unsafe and unhealthy condition of a opening of the roof over plaintiff

Ally's store.(R71:35). Such premises of the tenant have become unusable as a store for which it was intended, and said use and occupancy has been disturbed and discontinued by the willful failure to repair and restore the subject premises, although many requests were made by plaintiff Ally's attorneys (Pearlman, Apat and Futterman). (R71:36). On May 1, 1989, plaintiff Ally received an estimate for the sum of $8,085, which is some of the cost to repair some of the damages done by the said defendants. (R71:37;). In 1989 the store next to plaintiff Ally's store had afire and all the electrical wires in the building were damaged and the landlords Kishore and Palmour deliberately refused to fix the wires in Ally's store. (R71:38;141).

On September 18, 1989 a petition for non-payment of rent was filed in the Landlord and Tenant Court for rent, from April 1, 1988 to September 1989. The said landlords (Kishore and Palmour now defendants)claimed that plaintiff Ally defaulted in the payments of rent.(R71:39). On January 31,1990 plaintiff Ally appeared at the Landlord and Tenant Court for the trial of non-payment of rent which was taken off the calendar by the defendant's attorney,because the defendants promised to do the repairs and plaintiff Ally promised that as long as the repairs are done, she will pay the rent and continue with her business but the repairs was never done. (R71:40;). Plaintiff Ally argued that a tenant is not bound to make permanent and important repairs which the landlord has agreed to make, but may seek his remedy by action to recover the damages,or by counterclaim Thonson-Houston Electric Co., of N.Y. v Durant Land Improvement Co., 1894, 4 Misc, 207, 144 N.Y.S. 34 (R71:41). On February 5th, and 12, 1990 appellant's Ally's attorney wrote to the landlords (defendants) attorney, requesting that they do the repairs, but the repairs were not done.(R72: 45-46;144-145). On June 16,1990the defendants Kishore and Palmour started a meat business exactly the same as Ally's business after they finished repairing the burnt out store next door.(R72:47;146).(On October 1, 1992, December 4 and 24,1992 plaintiff Ally's attorney wrote again to the defendants informing them that Ally would

like to continue with her business and they (attorneys)would like the repairs done, but still no repairs were done. (R72: 48, 147-148; 73:49,149;73:50,150-151). The defendants Kishore and Palmour (landlords) accepted the plaintiff's rent from November 1993 to March 1994, and they still refused to repair the damages they did,so plaintiff Ally did the repairs and stocked her store for business, after the landlords saw that Ally's store was ready for business, water started to pour down again from the above apartment which created an unhealthy condition, and damage to the stocks, when plaintiff Ally spoke to the landlords about the damages, they said that she was crazy, so again the plaintiff could not continue with her business.(R73:51;152-156). On November 10, 1993 the defendants Kishore and Palmour wrote a letter to the plaintiff in which they agreed to accept plaintiff Ally's rent, and they had also summoned her to the Landlord and Tenant Court for rent, so they accepted her as their tenant but still water was pouring down and the damages were not repaired. (R73:52;157).

After the new owners Kishore and Palmour (who are now defendants) realized that they could not get plaintiff Ally's business to do their own meat and grocery business, they claimed that Ally's lease was forged, and they commenced an action in 1991 (Index No. 5610/91) against the original landlord Nazmoon Hassan and the tenant plaintiff Ally in the Supreme Court, County of Queens.(R73:54). Plaintiff Ally then made a counter claim against the said defendants because since the closing of the sale of the property, they did not allow the plaintiff Ally to continue with her business in peace, they wrongfully and constructively evicted her from the business premises when they opened the roof of the building and destroyed her business premises and all the contents within. Let the evidence show the fact. (R74:55; 158-159). The defendants (Kishore and Palmour)continually keep destroying the business premises and the contents of the said business premises, when ever the plaintiff Ally put new stocks in the store, the defendants Kishore and Palmour just pour water down and destroyed them,and they never notify the

the plaintiff that they were repairing the building. 160-164).

There was a trial on the action Index #5610/91 in or around May 1994, before Honorable Herbert A. Posner in the Supreme Court, County of Queens, the jury said that the plaintiff Ally was not constructively evicted, they also said that Ally's lease was altered from a one year lease to an eleven years, after it was signed by the original owner Kamaral Hassan and given to the plaintiff Ally, however, an interlocutory judgment was entered on July 15, 1994 (R74:57; 165-168), which said, that the plaintiffs Kishore and Palmour (now defendants) have judgment against defendant Ackleema Ally (now plaintiff) restoring them to immediate possession of the business premises, but, the part of the judgment which said that defendant Ackleema Ally (now plaintiff) must immediate vacate the premises, unless said defendant (now plaintiff-appellant Ally) paid plaintiffs (Kishore and Pal mour, now defendants) one thousand dollars on or before June 1, 1994, and in that event said defendant shall vacate said premises on or before June 31, 1994, was scratched off, so Honorable Judge Posner did not order the plaintiff Ally to remove immediately from the business premises, as a matter of fact, the plaintiff Ally was not ordered by the Court to remove at any time. Justice Posner did not issue a warrant for the plaintiff Ally's eviction and the new landlords (defendants Kishore and Palmour) did not serve a notice of eviction on Ally, and the trial for damages is still pending, so final judgment is not granted to the plaintiffs Kishore and Palmour (now defendants) as yet, and it is the warrant that cancels the lease and not the order and if the plaintiff Ally's attorney had produced the facts that was pro duced at the deposition of the original landlord Nazmoon Hassan, may be the ruling of the jury would have been different, however, Justice Posner did say that the plaintiff Ally was illegally evicted on March 10, 1988 by the original landlord Nazmoon Hassan. Plaintiff Ally then said, that interlocutory is provisional, in terim, temporary, not final. Something intervening between the commencement and to the end of a suit which decides some point of matter, but is not a final decision of the whole contro

versy. An interlocutory order or decree is one which does no fin ally determine cause of action, and which requires further steps to be taken in order to enable the Court to adjudicate the cause on merits. In re-Merle's Inc., C.A.Wash. 481F.2d1016, 1018.(R75:59). Plaintiff Ally do believe that whether she had a lease or not she was the legal tenant of the new owners (Kishore and Palmour) because they did accept her rent, before the trial. (R75:60). Plaintiff Ally cannot understand (1). How the plaintiffs (Kishore and Palmour)now defendants can the interlocutory judgment against her, restoring them to immediate possession when they started a landlord and tenant relationship with her when they accepted her rent before the trial; (2). How can her counterclaim be dismissed when the plaintiffs Kishore and Palmour (now defendants) never allowed her to continue with her business after she was restored to possession, and continually destroyed the business premises and the contents of the said premises, and even when they accept ed her rent, she repaired the business premises and stocked it, but she still could not do her business in peace before the trial. So, because of the continued destruction by the defendants, on Febru ary 22, 1994, just a few months before the trial, the plaintiff Ally's attorney, inform the defendants (Kishore and Palmour) About the unhealthy condition they are creating in the plaintiff's store premises. (R75:60;169-170).

After the trial plaintiff Ally was at the Supreme Court Court house when she saw her previous attorney, they greeted each other and he asked her how the case was going, she told him not very good, and she also told him that the jury said that she chan ged the lease from one year to 11 years, then he asked if her attorney did not produced the forged lease (R355-356) that Naz-moon Hassan (the original landlord of the building) produced at the deposition, then she (plaintiff Ally) remembered the deposi-tion and the lease, she told him, "No, I do not believe that he did," they chat for a few minutes and he wished her good luck and left. (R78:72). A few days after that, again plaintiff Ally was at the Court house when she saw one of the previous attorneys of the defendants Kishore and Palmour, they greeted each other

and he also asked how the case was going, she told him not very good, and he could not understand why, so he asked what happened and she told him about the lease, then he said, "but didn't your attorney produced that forged lease which Nazmoon Hassan produced at the deposition?" The plaintiff Ally said, "No, I do not believe that he did," the said attorney could not understand why the plaintiff's attorney did not produced the forged lease and the facts that was produced at Mrs. Hassan's deposition, however, they chat for a few minutes and he wished her good luck and left.

Since plaintiff-appellant Ally ealized that her new attorney did not produced the facts of the deposition of the original landlord Nazmoon Hassan, which may have changed the jury's decision on the lease, she made a cross-motion dated August 24, 1994, to modify or vacate the interlocutory judgment on the grounds of newly discovered evidence. (R78:74; 176-177). On October 4, 1994, the defendants made a motion before Hon. Herbert A Posner for the Judge to punish Ally for contempt of Court for failing to comply with the judgment and for sanctions and costs." (R79:75;178-17 9) But the plaintiff Ally was not in con tempt of the Court, for the Court did not order the plaintiff to vacate the premises, the Court said that the plaintiffs Kishore and Palmour (now defendants) have judgment against defendant Ally (now plaintiff) restoring them to immediate possession, but, the part of the judgment which s aid that defendant Ack leema Ally (now plaintiff) must immediate vacate the premises, unless said defendant paid plaintiffs one thousand dollars on or before June 1, 1994, and in that event said defendant shall vacate said premises on or before June 31, 1994, was scratched off, so plaintiff Ally was not ordered by the Court to remove immediate -ly from the business premises, as a matter of fact, the plaintiff Ally was not ordered by the Court to remove at any time, how ever, on or about October 12 1994 by order Justice Posner denied the motion to stay the execution of the judgment and the cross-motion for c ontempt was withdrawn. (R79:75). Photographs were taken of the inside of the store after Ally did the repairs and stocked the business before the trial, but the land

lords (defendants) refused to accept her rent after the trial (R79: 76,180-184). On October 15, 1994 plaintiff Ally packed all of her personal and household property from her apartment into the store premises for a few weeks until she gets her new apartment since the building that she was living in was sold and since the defendants refused to accept her rent after the interlocutory judgment. She only took with her 2 pairs of shoes and a few pieces of clothing, and her case materials. Everything that she owned all her life was packed in there. On October 31, 1994 plaintiff Ally made a motion to vacate or modified the judgment, Justice Posner denied the motion but gave Ally permission to produce her undisclosed evidence that was produced at the deposition at the trial for damages. Since the plaintiffs Kishore and Palmour (now defendants) knew that if plaintiff Ally produce her evidence there may be a change in the verdict, on the said October 31,1994 the landlords (defendants) and their employees broke the locks and entered the store premises and removed some of Ally's personal property, household property, and other items from the store premises. (R80:78;). Let the sworn affidavit of an eye witness and a photo-copy of the pin that was sawed off the lock show the evidence to this fact. (R80:79;185-187). On November 1, 1994 the two (2) workers of the defendants were again seen inside the store removing the stocks from the shelves, and they were arrested, let the evidence show the fact that the workers were arrested. (R80:79;188-189). The pin is in the case materials of Index # 023087/95 in the Court's record's room, should the Court need to see it. Upon information and belief the defendants and their attorney lied to the district attorney and the Judge that they had final judgment and they had a right to be in the store. Upon information and belief the workers accepted an offer of ACD from the Criminal Court and eventually the case was dismissed and sealed, and because this case is sealed and plaintiff Ally is a pro-se she could not see the records, so should this Court needs further information on that case, then the Court can request the records from the Criminal Court, the case number is 94Q040875. (R80:79).

An illegal and fraudulent execution dated August 5, 1994 was made by the (defendants) Kishore and Palmour's attorney (Richard S. Graver) and was delivered to the City Sheriffs for the eviction of the plaintiff Ally. (R76:62;171-172), and the said execution was not served on the plaintiff. The judgment in the action 5610/91 was only an interlocutory judgment (R165-168) and not a final judgment, and no warrant was issued to the City Sheriffs by the Judge for the plaintiff Ally's eviction. A 72 hour notice dated August 18, 1994 was made out by the City Sheriffs, claiming that "a final order has been made in the above proceed ing (5610/91) awarding to the plaintiffs (now defendants) possession of the premises now occupied by you at 103-25 127 Street, and that a order has been issued commanding the Sheriff to remove you there from and put the plaintiff (Kishore and Palmour, now defendants) in possession thereof." (R77:64;173). This 72 hour notice was never served to the plaintiff-appellant Ally, and the City Sheriffs made a false representation when they said that a final order has been made in the proceeding, when it is only an interlocutory judgment. (R165-168).

However, on December 14,1994 the said (defendants) Kishore, Palmour and the City Sheriffs broke the locks as well as chang ed the locks on the store premises, even though they knew that they never served an eviction notice, and they also knew that final judgment was not granted to them as yet, this time they kept the business premises with all its contents in their possession and it was very up setting, sad, and heart breaking to see the way they willfully and maliciously destroying and removing the contents of the said business premises, plaintiff Ally had lived in London for nineteen years and most of her crystals, chinas and Queen Anne silver plated things and many other things came from there, and they were very expensive. The defendants were seen many times destroying and removing plaintiff Ally's household and personal property, which including very important documents, school materials, gifts, many, many years of research materials, many, many books, very old reli-gious books that are being used for research, clothing, furnitures,

fixtures and fittings, the stock that were in the store, the equipments and machinery, craft books and many, many other craft items, and *many, many* cake decorating items, electronic items, sewing machine and lots of materials and patterns, and many other electrical items, and many, many, many more items, it took Ally all her life to accumulate all that she had, and to stand there and see it all being destroyed was not very easy . The defendants completely destroyed the life of plaintiff Ally and her children, for she was a one parent family, her business, all the contents of the said business premises, all her household and personal property, all her income, were completely destroyed which caused extreme emotional distress. See destruction (R.191 -203).

The police were called many times to look into the matter be-Cause the defendants were creating a fight with her(plaintiff Ally) when she tried to stop them from destroying her things. Let the evidence show the facts. (R191-203), also let the form 064 show the fact that City Sheriffs did admit that they gave possession to the (defendants) Chandra Kishore on December 14, 1994, pursuant to an order of possession/execution to deliver real property issued out of Supreme Court, Queens County, to the Sheriff of the City of New York, New York County Division. (R80:80;190) The City Sheriffs again made a false representation when they said that the order of possession/execution was issued out of the Supreme Court to the Sheriff of the City of New York, when the execution was from the (defendants) Kishore and Palmour's attor ney Richard S. Graver and not from the Supreme Court(R171-172). After the eviction plaintiff Ally and the defendants Kishore and Palmour went back to the Supreme Court,Queens County and the plaintiff Ally told Hon. Justice Posner what the defendants did, and the Judge told Ally that she can sue them, the Honourable Justice Posner then asked to see the receipt of the Notice of Service of the 72 hour eviction notice and the execution, but the defendant's attorney Mr. Graver could not produced it, because it was not served (R81:82) so since a tenant's eviction did not operate as legal surrender of her right to personal property and all

the other items which were taken from the subject premises, on or about December 21, 1994 plaintiff Ally moved by order to show cause why an order should not be entered stopping the plaintiffs and the Sheriffs from destroying and removing the contents of the said store premises pending the trial on damages and why an order should not be entered for this new illegal eviction, since, a trial date was granted, and since permission to produce new evidence was granted, and why a warrant for the arrest of the plaintiffs Kishore and Palmour (now defendants) should not be entered for break and enter also destruction and theft, and why an order should not be entered stopping the sale of the said property (R204). The motion were opposed by the defendants, and on or about January 30, 1995, Justice Posner denied the motion.

The return date for the motion to renew was January 31, 1995 (R84:91;208) the defendants Chandra Kishore and Prabha Palmour nor their attorney Richard S. Graver appeared, so Justice Posner's clerk, Miss Brown called Mr Graver and asked him if he forgot about the motion, Ally do not know what he said to her,but Ally heard her telling him that Ally would like to remove some of her things from the store premises, Miss Brown then told Ally that Mr Graver said that he will not allow her (Ally) to remove anything unless she pays $1,000.00. (R84:91). On May8, 1995 the plaintiff Ally saw Prabha Palmour and a worker removing and willfully destroying her things that are in the store. Mrs Palmour wanted to create a fight with Ally, so she called the Police to look into the matter. (R84:92; 209:210). Since the Supreme Court has done nothing to stop the defendants from destroying and removing the contents from the said business premises. The plaintiff Ally, then filed an order to show cause in the Landlord and Tenant Court on or about May 15, 1995 and plaintiff Ally was granted-an order from Judge Schmidth, staying the defendants from removing the contents of the said store and from reletting the subject business premises (R84:93;211) This case was adjourned for June 12, 1995. (R84:93). Although the defendants knew that there was a Court's Order not to remove Ally's things or relet the subject premises, yet, on May 31, 1995 plaintiff Ally received a phone call that the defendant Palmour

was inside the store destroying her things and removing them from the store premises, so Ally called the police before she went there, when Ally arrived there she found that the door of the store was locked from inside, so she started to take photographs of the defendant Palmour from the outside of the glass windows when suddenly Palmour (defendant) disappeared, Ally could not understand where the defendant Palmour went, because the only entrance and exit was the front door which was locked from inside. Then a passer by told Ally, "Look she is up there screaming and shouting that you are killing her with a knife." Lucky for Ally the police arrived at the same time, so, Ally gave the police the order from the Judge who was from the Landlord and Tenant Court. When the police officer told the defendant Palmour to come down and open the store door, she refused to do so, so he started to bang the door to get it open, then Palmour told the officer that she will come down and open it, when the officer saw the hole in the wall he told Ally to cover it with a board, and warned defendant Palmour that she should immediately lock the store premises. Late that night approximately 8 or 9 pm when the said police officer was off duty, the defendants Chandra Kishore and Prabha Palmour went to the police precinct and the defendant Palmour started to cry and pretended that she was bad -ly beaten up, and when the police offered to take her to the hospital she refused to go, and Ally was never near to her, for she was in a locked building and Ally was out on the sidewalk. Around the same time Ally went to the precinct to ask the police if they could check the second floor of the store building to see if the defendants have any of her things up there, or if they removed them completely from the building, when to Ally's surprise one of the police officers came up to her and said," Miss Ally, I am very sorry about this, I know that it is wrong but I can do nothing about it, the old woman really fooled the Superintendent and he told me to charge you." Ally asked the officer if the Superintendent spoke to the officer that was on the scene and he said, "No, because the officer was off duty." (R84:94;212-215). The next day Ally went back to the precinct and asked the officer who charged her if he spoke to the officer who was on the scene

and he said, "Yes," he also said that the officer said that charging Ally was nonsense, for the old lady lied. Ally was not arrested but she was given a desk charge. This case went on for approxi mately one year in the Criminal Court then it was dismissed be cause the defendant Palmour lied to the prosecutor that she had a stroke and she was too sick to come to trial, yet, she was seen many times in the Supreme Court around the same time she claimed that she could not go to Court, so the time to prosecute was passed and the case was dismissed and sealed. The Commissioner of Police was informed of the Police Superintendent's action. Mr Graver (defendant) had represented the defendants in the Landlord and Tenant Court, County of Queens, so upon information and belief he knew what his clients were doing. (R85:94). Please note that this fact is just to show the Court how much harassment, hardship and extreme emotional distress plaintiff Ally went through. The new owners Kishore and Palmour's (defendants) attorney opposed the Motion at the Landlord and Tenant Court, and it was dismissed wit h costs on June 12, 1995, because the defendants' Kishore and Palmour's attorney Mr Graver told the Judge that his clients have final judgment against the plaintiff Ally. (R86:95;216). There is still no final judgment yet on that action Index #5610/91, so on account of the false representation of the City Sheriffs when they said, that the judgment was a final order, when in fact it was only a interlocutory judgment, and that they received a order out of the Supreme Court to evict the plaintiff, when they did not, everything that the plaintiff Ally have accumulated all her life was completely troyed and removed, all she was left with was 2 pairs of shoes, a few pieces of clothing and her case materials, and that 72 hour notice was never served, if they had served it, they would have been told that the judgment was not a final judgment, only an interlocutory judgment (R86:96). A Summons and verified complaint dated June 11, 1995 was filed in the Supreme Court, the plaintiff Ally commenced this action Index No. 21625/95, against the defendant's Kishore and Palmour for breaking into her business premises and removing some of her personal, and household property and other items from the store premises

on October 31, 1994, when their workers were arrested. (R86:97; 217). The defendants Kishore and Palmour did not answer the plaintiff's verified complaint, so she moved for default judg ment, then, the defendants appeared before Justice Goldstein, when a stipulation was agreed upon, that the plaintiff will with draw her motion for default judgment and extend the defendants' time to answer her complaint, and also for the action to be trans-ferred to Justice Posner, since the original action Index#5610/91 was before him. (R87:98;224).

When this action was transferred to Justice Posner the defen-dants' still did not answer the verified complaint, so the plaintiff then moved again for default judgment, then the defendants Kishore and Palmour, moved by cross-motion to dismiss com-plaint claiming Res Judicata of the previous action Index#5610/91 On the return date of this motion, a date was fixed for May 10, 1996 for a conference before Justice Posner. An order was signed on May 17, 1996, by Justice Posner which said: "Upon the foregoing papers it is ordered that this motion and cross-motion, following a conference before the Court on May10, 1996, are dis posed of as follows: "The defendant (Kishore and Palmour) is confusing the prior action with this new complaint for damages. The motion and cross-motion are denied and defendant's time to serve and file an answer is extended for 20 days after service of a copy of this order."(R87:99;225). This action did not include the wrong doing of the defendants' Kishore and Palmour's attorney Mr Graver and the City Sheriffs. And since the Supreme Court did not issue a warrant for the plaintiff's eviction to the City Sheriffs, and the judgment was an interlocutory and not a final judgment, and the Supreme Court or the Landlord and Tenant Court did nothing to stop the defendants from destroying and re-Moving all the contents of the said business premises, plaintiff Ally commenced another action Index #023087/95 on October 19, 1995, against the defendants Kishore and Palmour for the complete destruction of the plaintiff's business, the contents of the said business premises which include all of her household and personal property and for the violation of Section #853 of the

Real Property Action and Proceeding Law, the defendants Richand S. Graver and the City Sheriffs were named but were not summoned to appear or plead at this time. (R88:101; 227-235).

There was a trial between the original landlord Hassan and plaintiff Ally for the wrongful eviction and a judgment was entered on January 19, 1996 granting the plaintiff Ally a money judgment of $3,000 against the original landlord for the illegal eviction, and because the receipts and other documents which would prove the amount of stocks and other items that were in the store premises were removed and destroyed at the time of the

eviction, Ally could not prove the amount of damages that was done,but hundreds of pounds of meat and g roceries were destroyed. (R89:102;236-237). The order of Justice Posner dated May 17, 1996 (R89:103;238) had extended the defendants time to serve and file an answer to plaintiff's verified complaint Index #21625/95, for 20 days after the service of a copy of the order. But according to the plaintiff's knowledge of the fact, the defend ants did not serve their papers within the said time, so the plaintiff made amotion for summary judgment and to strike the defen dants' answer, the defendants cross-moved and told the Judge of plaintiff's other action Index No. 023087/95, but Justice Posner who knew nothing of what the other action Index #023087/95 was about at the time, made a order dated November 13, 1996 which said as follows: "Upon the foregoing papers it is ordered that this motion by plaintiff (Ally) for summary judgment and to strike defendants' answer is denied since there are clearly triable issues of fact and defendants' answer was timely served in accordance with this Court's order of May 17, 1996. The defendants (Kishore and Palmour) are awarded $500 in costs and sanctions in view of plaintiff's frivolous conduct in commencing separate actions for the same relief and bringing on meritless motions. The plaintiff is directed to pay said sum of $500 by check or money orde r payable to defendant's attorney Socrates Scott L. Nicholas, Esq., within 20 days of service of a copy of this order." (R238). (1). This order sanctioned the plaintiff $500.00 because

she brought another action in another Court, claiming that it was for the same relief, when it was for a completely different cause of action. (2). At this time the plaintiff did not produce the fact, the pin that the defendants broke off from the locks of the store premises and the sworn affidavit of the witness who saw the defendants breaking the locks. (R239-214). The plaintiff then moved by motion to stay the execution of the said order dated November 1 or 13, 1996, but a order dated January 13, 1997 was signed by Justice Posner, which said as follows: "Upon the foregoing papers it is ordered that this motion and cross-motion are dis posed of as follows: The plaintiff (Ally) previously has been admonished by the Court to cease making meritless motions. The instant motion is not only without merit it is also incomprehensible. Accordingly, the defendants are awarded $500 costs and sanctions to be paid to their attorney, Socrates Scott Nicholas, within 20 days of service of a copy of this order. The plaintiff is stayed from making any further motions until the costs and sanctions awarded by this order and the prior order of November 13, 1996 are paid. The plaintiff is also stayed from any further proceedings in this action until she responds to the defendants' interrogatories dated June 21, 1996. (R90: 104;242). The costs and sanctions of $1,000.00 (One thousand dollars) was then paid to the defendants Kishore and Palmour's attorney Socrates Scott L. Nicholas, on July 8, 1997. The defendants Kishore and Palmour did not answer the plaintiff's verified Complaint Index# 023087/95, so she moved for summary judgment on or about May 21, 1996, and since the defendants still did not appear or plead in this action, she again moved on June 17, 1996, then, the defendants Kishore and Palmour cross-moved to consolidate the two actions Index #023087/95 and 21625/95. On August28, 1996 a memorandum was signed by Honorable Joseph. M. Lane, Justice Lane consolidated the action Index #23087/95 with the action Index #21625/95 and he said, "After due consideration, the cross motion is granted to the extent that the Court orders the with-in actions combined and respectfully referred to Hon. Herbert A. Posner for joint trial due to the fact that Justice Posner has the Action with the lower Index No. 21625/95. The main motion is

denied without prejudice to renew before Justice Posner at the appropriate time." (91:106;243). Even though the defendants cross-move for this order, they did not take the order, the plaintiff Ally then served and filed a proposed order, which was signed on December 2,1996, the Order said that the actions are combined for joint trial and that each shall retain its own Index# and separate notes of issue shall be filed for each action. (R91:106; 244-246). After the actions Index No. 21625/95 and 023087/95 were consolidated for joint trialby Justice Lane without prejudice to renew summary judgment on Index No.023087/95, so on or about December 27, 1996 the plaintiff renew her motion for summary judgment on Index #023087/95, but it was denied, by order dated February 13, 1997 (R91:107). On March 24, 1997 the plaintiff Ally filed two separate Note of Issue, one for Index #21625/95and the other for Index #023087/95.(R91:108;247-248). Then Mr Nicholas (defendants' Kishore and Palmour's Attorney) wrote a letter to M s Annmarie Brown (Justice Posner's Law Clerk) which said: "Dear Ms Brown: I have been served by Ackleema Ally with a Note of Issue and Certificate of Readiness for Trial, dated March 21,1997 as well as a "Notice of Confirmation," dated February 21, 1997 (copies en-closed). The plaintiff, Ackleema Ally,has failed to comply with either of the decisions of Hon. Herbert A Posner, filed and entered on November 25, 1996and January 27, 1997, for which Notices of Entry were each served on January 30, 1997. She has neither provided her Answers to Defendants' Interrogatories, nor has she paid the impos ed sanctions, totaling $1,000.00. It is my understanding that the outstanding discovery of the information and documents request ed through Defendants' Interrogatories, and the requirement that Ms Ally pay the outstanding sanctions award, shall survive plaintiff's filing of a Note of Issue. This will permit plaintiff to comply with the Court's directives without removing this case from the trial calendar. (R91:108;249). On April 19, 1997 the plaintiff Ally wrote to Ms Annmarie Brown (Justice Posner's Law Clerk) as reply to Mr Nicholas letter to her, which said : "Dear Ms Brown:This is to inform the Court that my answers to the defen dants interrogatories had been rejected by the defendants' attor

ney also my Renew Notice of Confirmation, however pursuant to CPLR3140#9 I do not have to answer the defendants interro gatories again, which is as follows: Pursuant to CPLR 3140#9 provides: Where in one of two actions for which joint trial had been directed, statement of readiness had been filed, defendants was not entitled to issuance of order directing plaintiff in other action to answer interrogatories. Rudolph v Bowling Corp. of Plain view, 1971, 67 Misc.2d 463, 324 N.Y.S. 2d 448. I do hope that this CPLR3140#9 Rule of the New York Civil Procedure Law and Rules will clear up all existing problems concerning the interrogatories of the defendants. (R92:109;250). On or about April 30, 1997 the defendants Kishore and Palmour made a motion to strike complaint with prejudice or to prohibit plaintiff from supporting her claims and for an award of sanctions. The plaintiff Ally opposed this motion but a order dated May 28, 1997 was signed by Justice Posner, which said as follows: Upon the foregoing it is ordered that this motion is granted and the complaint in this action is dismissed with prejudice. The plaintiff has failed to comply with this Court's orders of November 13, 1996 and January 13, 1997 and therefore cannot proceed with this action. Moreover, she has inundated this Court with meritless and incom prehensible motions and submissions despite repeated instructions by the court to cease. As a result both the defendants and the Court have been unnecessarily inconvenienced and put to need less expense of time and resources (R92:110;251).

A summons and verified complaint dated October 2, 1997 was Then filed in the Supreme Court, Index #23514/97, (R93:111; 252-269), the plaintiff Ally then joined all the tort feasors in this new joint tort feasors actions, since Mr Graver (Kishore and Palmour's attorney) willfully and wrongfully made a fraudulent execution, which he admitted in his motion to dismiss, when he said, "The only factual allegations that appear to be relevant to a claim Ally thinks she has against me, is her allegation that I wrongfully prepared an execution which led to her eviction from the premises." (R275: Verse #16).(1). The City Sheriffs admitted

in this form 064 that they evicted the plaintiff on December 14, 1994. (2). They also committed fraud when they made a false representation by saying that an order of possession/execution to deliver real property issued out of Supreme Court, when the Supreme Court did not issued any order of possession/execution to the City Sheriffs. The Court did say in the interlocutory judgment that the plaintiffs Kishore and Palmour, (now defendants) have judgment against defendant Ackleema Ally (now plaintiff), restoring plaintiff, (Kishore and Palmour) to immediate possession of the premises know as 103-25 127 Street, but for the plaintiff (now defendants) to have immediate possession of the premises, they had to get a warrant from the Court, but could they get a warrant from the Court? The answer is "No, I don't believe so," because, the judgment was not a final judgment, only a interlocutory judgment, and the Court did not order the plaintiff Ally to vacate the premises at any time, so that the plaintiffs (now defendants) can have immediate possession. and (3). The City Sheriffs knew at all times that the execution was written by the defendants Kishore and Palmour's attorney Mr Graver and it is not a mandate from the Court. (R93:113).

The City Sheriffs again committed fraud in the 72 Hour Notice which they did not serve, when they said, "that a final order has been made in the above proceeding awarding to the plaintiff (now defendants Kishore and Palmour) possession of the premises now occupied by you at 103-25 127 Street, and that a order has been issued commanding the Sheriff to remove you there from and put the plaintiff (now defendants) in possession thereof. (1). A final order has not been made in the proceeding 5610/91in the Supreme Court, only a interlocutory judgment. (2). A order has not been issued commanding the Sheriff to remove the plaintiff and (3). Can the City Sheriffs just go and evict some one without serving a eviction notice or without letting them know that they are being evicted? The answer to that is "No, I do not believe so." The plaintiff Ally do believe that the defendants broke the law by there actions, because the Sheriffs or Marshalls can no just walk into someone's home or business

and throw them out and keep their possession without due process of the law or without a warrant from the Court (R94:114

In this new action Index #23514/97 the plaintiff Ally joined all the tort feasors for their wrong doings in this joint tort feasors action, but the defendant Mr Graver made a motion to dismiss pursuant to CPLR3211(a)(1)(5) and (7) to dismiss the verified complaint upon the grounds that the defense is founded upon documentary evidence, that the cause of action against the said defendant may not be maintained because of Collateral Estoppel, and Res Judicata and that the complaint fails to state a cause of action and for an order pursuant to 22NYCRR #130-1 and CPLR #8303-a imposing sanctions in the sum of $10,000 for or commencing a frivolous cause of action. (R95:116;270-278). The plaintiff Ally then made a cross-motion for summary judgment and dismissal of main motion pursuant to CPLR3211(b) and on the grounds that, (1). Pursuant to CPLR 3211/10: An affidavit cannot qualify as "Documentary Evidence" to support a dismissal based on paragraph 1. (2) Under former C.C.P.1876#2244: Collateral Estoppel and Res Judicata could be raised only by answer and not by motion to dismiss and the Res Judicata Rule is only when a final judgment is rendered on the merits, so far there is no final judgment on the merits, Collateral Estoppel Doctrine is Prior Judgment between same parties on different cause of action is an estoppel, in this action the parties are not the same and the cause of action is not different from the other two actions. (3). Pursuant to CPLR 3013#6: Forms of action have been abolished, and the complaint verse #82 stated will fully, intentionally, knowingly, and negligently (without care), and for an order denying sanctions of $10,000.00 upon the grounds that my cause of action is not frivolous, my business and contents of the said business premises were destroyed, including all my household and personal property, so I am claiming the damages caused, against all the defendants.(R95:117;279-308)

Even though the defendant Mr Graver did admit in his affirmation in support of motion to dismiss that, "the only factual alle-

gation that appear to be relevant to a claim Ally thinks she has against me is her allegation that I wrongfully prepared an execution which led to her eviction from the premises. (R275:16), yet, the order of Hon. Arthur W. Lonschein dated November 19,1997 said: Upon the foregoing papers it is ordered that this motion is granted, and the complaint is dismissed, and the cross-motion is denied. The parties are directed to appear before the court on December 18, 1997 at 9.30 am for a hearing on the issue of sanctions. This action concerns an ejection action commenced In 1991by the defendants Kishore and Palmour against the present plaintiffs. The movant, the defendant Graver, was the attorney for Kishore and Palmour in that action, which resulted in 1994 in a interlocutory judgment of ejectment in favor of Kishore and Palmour and against the present plaintiffs. A counter-claim asserted by the present plaintiffs for wrongful eviction was dismissed.

The present plaintiffs then commenced two separate actions in 1995, claiming damages for wrongful eviction. These were consolidated, and dismissed by the Hon. Herbert A. Posner, with prejudice, on May 28, 1997 on the grounds that the plaintiffs had failed to comply with orders to disclose, and that they persisted in making "meritless and incomprehensible motions." This action is essentially identical with the actions which were consolidated and dismissed with prejudice by Justice Posner. The plaintiffs are bound by that decision, and cannot seek to circumvent it by bringing yet another action. Even if they were not so bound, this claim is barred by the 1994 judgment. Even if they were not precluded by that judgment, this claim, as against the movant, is clearly meritless, as it is settled that an attorney may not be held liable to a third party for acts done in the course of his representation of a client, in the absence of fraud, collusion or a malicious or tortuous act (Michalic by Nakouics v Klat, 128 AD 2d 505; Viscardi v Lerner, 125 AD 2d 662). Since this is at Least the third in a succession of repetitive, meritless applications and lawsuits, sanctions appear to be warranted (R96:118;309-310). The order after the hearing said: "It is ordered that the

defendant Graver shall recover of the plaintiff Ally the sum of $2,500 for costs pursuant to 22NYCRR 130-1.1." the Court continued to say, "The Court determined that the plaintiff was guilty of frivolous conduct in commencing this action, in that the action was completely without merit, and could not be supported by a reasonable argument for an extension, modification or reversal of existing law; and in that it was undertaken primarily to harass the defendants."The Court continued, "The plaintiff Ally was given an opportunity at the hearing of December 18, 1997, to explain or justify her conduct, and could not do so, beyond restating her grievance. That grievance is meritless as a matter of law." (R97:119;311-312). "The Court's order continued to say: Even if they were not precluded by that judgment, this claim, as against the movant, is clearly meritless, as it is settled that an attorney may not be held liable to a third party for acts done in the course of his representation of a client, in the absence of fraud, collusion or a malicious or tortious act."(R97:120 311-312). Because the plaintiff's complaint was dismissed and the cross-motion was denied on account of the above verse, and the above verse was not a ground for dismissal and the attorney did not make a motion to separate his cause of action from the cause of action of the other defendants and this is a tort action, the plaintiff Ally made a motion to renew her cross-motion for summary judgment on the grounds of additiona facts and Laws not previously considered in this action (R97:120;313-321), and that the action is a joint cause of action and the defendant (Graver) did not make a motion to have causes separately stated, therefore he did not fuse his respective claim, and that the presence of fraud, collusion, malicious and tortious acts can clearly be seen, since the said defendant's actions are not only the existence of actionable wrong but the wrong caused damages. Plaintiff continued to say that the elements of fraud in an action include false representation of a present or past fact and collusion is an agreement between two or more persons to defraud a person of his rights by the forms of Law, or to obtain an object forbidden by law, it implies fraud of some kind.

The order of the Court said, "Upon the foregoing papers it is ordered that this motion is deemed a motion to reargue, and is denied. The Court has already imposed sanctions on the plain tiff for frivolous conduct in this action. This motion is yet an other frivolous act by a litigant who refuses to accept the determination of the Court. Accordingly, the plaintiff Ackleema Ally is directed to appear before the court on April 29, 1999 to show cause why further sanctions should not be imposed (R98:121;322). The plaintiff also made a motion to stay the execution of the order that granted costs and attorney's fees to Mr. Graver, but the motion was denied and the plaintiff was directed to appear before the Court on April 29, 1999 to show cause why further sanctions should not be imposed. The lower Court gave the City Sheriffs at least four (4) extensions of time to answer plaintiff Ally's verified complaint and still they did not answer the verified complaint. The first was given up to December 8, 1997(R98: 122;323-324) even though their papers were filed after the date requested by the summons, and also, they did not serve any motion papers to the plaintiff Ally when they requested that extension, plaintiff Ally found the order and the motion papers in the file in the Court Records Office, after the extension was granted. Two more motion was granted to the City Sheriffs and the two orders dated November 23, 1998, both orders said, "It is ordered that this motion is granted, only to the extent that the action is dismissed. As noted in the order of November 19, 1997, dismissing the action as against the defendant Graver, and in the order of even date herewith, imposing costs and attorney's fees against the plaintiff Ally and in favor of the defendant Graver, this action is essentially duplicative of two prior actions which were consolidated and dismissed by order of Justice Posner. That conclusion is not changed by the fact that the plaintiff has now chosen to sue the public officers who carried out the court's mandate, rather than the persons in whose favor that mandate was granted. (R99:123;325-326). And third the return date for the motion to renew plaintiff Ally's cross-motion for summary judgment on the grounds of additional facts and laws not previously considered was on February 16, 1999, but Ms

Cruise, the City Sheriffs attorney, turned up in court and asked for an extension of time to answer appellant's verified complaint, and again the lower Court granted the extension to March 9, 1999.

The motion to renew the cross-motion was against Mr Graver but the lower Court allowed the City Sheriffs toanswer the motion even though the plaintiff asked the Court to reject their an swer, because the record is reflecting continuous pattern of default and neglect which is prejudiced to the plaintiff, but the lower Court still allowed the City Sheriffs attorney to appear in Court in opposition on April 29, 1999 and then the lower Court signed a memorandum dated April 30, 1999 and sanctioned the plaintiff $5,000 on account of the motion brought against the City Sheriffs. The attorney defendant Mr Graver did not appear, but was awarded $5,000 for costs and attorney's fees on account of the plaintiff Ally's frivolous action within the meaning of#130 -1.1,which is the total of $10,000 in sanctions (R100:126;327-328). The proposed signed Judgment which was dated August 19, 1999 by plaintiff Ally (R99:124:329-331) for some reason could not be found in the Court, however, when it was found the plaintiff served and filed a Notice of Appeal dated December 15, 2000 (R99:124;332). An order was signed and entered in the Appellate Court which said, "In an action to recover damages for wrongful eviction, the plaintiff appeals from a judgment of the Supreme Court Queens County (Lonchein, J.) dated August 19, 1999, which, after a hearing, imposed a sanction upon her in the sum of $10,000 for frivolous conduct. ORDERED, that the judg ment is affirmed, with costs. Although a jury found that the plaintiff was not wrongfully evicted, and a court previously dis missed two prior actions by the plaintiff seeking damages arising out of the eviction, the plaintiff commenced this action for the same relief. Under the circumstances, the Supreme Court providently exercised its discretion in imposing a sanction upon the plaintiff for engaging in frivolous conduct (see 22 NYCRR 130-1.1 (c); Gache v Town Village of Harrison, 251 AD 2d 624; Janitschek v Trustees of Friends World Coll. 249 AD 2d 368; Murray v National Broadcasting Co., 217 AD 2d 651. The plaintiff's

remaining contentions are not properly before this court on this Appeal. Altman, JP.,Smith, McGinity and Townes, JJ., Con cur. Enter. (R99:124;333).

The plaintiff Ally believe that all the defendants were the fruit of a willful, illegal, intentional, collusion, conversion, negligent, fraudulent, malicious, fraudulent, malicious and tortious act. The plaintiff Ally then filed a notice of appeal as of right, in the State of New York, Court of Appeals as follows: Please Take Notice, that the above named pro se plaintiff-appellant, Ackleema Ally, hereby appeals to the Court of Appeals, State of New York From the order as final judgment under CPLR 5501(a) entered February 18, 2003 of the Hon. J.P. Altman, Smith, McGinity and Townes, JJ., concur. Justices of the Supreme Court of the State of New York, Appellate Division, Second Department in the proceeding herein, and which order affirmed the judgment with Costs (Index#23514/97) of the Supreme Court of the State of NewYork,Queens County, and pursuant to CPLR 5501(a)(1)(2)(3)(4) that the judgment of (Index#23514/97) entered August 26, 1999, and all orders in this action o the Hon. Arthur W. Lonschein, Justice of the Supreme Court of the State of New York, Queens County; that the interlocutory judgment (Index #5610/91) entered July 15, 1994, and all orders in this action of the Honorable Herbert A. Posner, Justice of the Supreme Court of the State of New York, Queens County; that the order entered December 2, 1996 (Index#23087/95) of the Honorable Justice Joseph M. Lane, Justice of the Supreme Court of the State of New York, Queens County; that all orders entered in the actions (Index#21625/95 & 23087/95) of the Honorable Justice Herbert A Posner,Justice of the Supreme Court of the State of New York, Queens County; that the order dated May 5, 1995 of Justice F Schmidt, Justice of the Landlord and Tenant Court, Queens County; that the order dated June 12, 1995 of Justice Bernard S. Greenbaum, Justice of the Land-lord and Tenant Court, Queens County, and that all orders in this action and the previous actions be reviewed by this Court on the grounds of the merits of the facts, and the evidence, the law, the Constitutional right, the

Constitutional protections, the Constitutional liberty and free dom,together with protection under due process law clause of the 4th, 5th, and 14th Amendment rights of the appellant, and from each and every part thereof, of the said order as final judgment Judgment, interlocutory, judgment, and all orders from the actions, starting from the action Index #5610/91 to the final action Index #23514/95 as a whole thereof. (R100:126;334-335).

The order from the Court of Appeals are as follows: The appel lant having filed notice of appeal in the above title and due consideration having been there upon had, it is Ordered, that the appeal be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved. This order was signed by Mr. Stuart M. Cohen, Clerk of the Court. (R101:127;336). A motion for permission to appeal to the Court of Appeals dated July 3, 2003 was filed in the State of New York Court of Appeals on the grounds as follows: "Please Take Notice, that upon the copy of records, briefs and oral argument that is already filed in this Court and upon the annexed sworn affidavit with exhibits as evidence of Ackleema Ally the above named pro-se plaintiff-appellant, dated July 3, 2003, and upon all pleadings and proceedings heretofore had herein the pro-se plaintiff-appellant Ally will move this Court, at Court of Appeals Hall, of this Court to be held at the courthouse thereof located at 20 Eagle Street, Albany, New York, on the 18th day of July, 2003 at 9.30 o'clock in the forenoon of the day or as soon thereafter r as pro-se plaintiff-appellant Ackleema Ally can be heard for an order granting her per mission to appeal by this motion, from the order as final judgment under CPLR5501(a) entered February 18, 2003, of the Hon orable J.P. Altman, Smith, McGinity and Townes, JJ., concur. Justices of the Supreme Court of the State of New York, Appellate Division, Second Department in the proceeding herein, and this order affirmed the judgment with Costs of Index #23514/97 of the Supreme Court of the State of New York, Queens County, the said order was mailed to me by the opposing party with notice of entry on March 26, 2003, and pursuant to CPLR 5501(a)(1)(2)

(3)(4) that the judgment of Index #23514/97 entered August 26, 1999, and all orders in this action of the Honorable Arthur W. Lonschein, Justice of the Supreme Court of the State of New York, Queens County; that the interlocutory judgment Index #5610/91 entered July 15, 1994, and all orders in the said action Index #5610/91 of the Hon. Herbert A. Posner, Justice of the Supreme Court of the State of New York, Queens County; that the order entered December 2, 1996 Index #23087/95 of the Hon. Justice Joseph M. Lane, Justice of the Supreme Court of the State of New York, Queens County; that all orders entered in the actions Index #21625/95 & 23087/95 of the Honorable Justice Herbert Posner, Justice of the Supreme Court of the State of New York, Queens County; that the order dated May 5, 1995 of Justice F Schmidt, Judge of the Landlord and Tenant Court, Queens County; that the order dated June 12, 1995 of Judge Bernard S. Greenbaum, Justice of the Landlord and Tenant Court, Queens County; and that all orders in this action and the previous actions be reviewed by this Court on the grounds of the merits of the facts, and the evidence, the law, the Constitutional right, the Constitutional protections, the Constitutional liberty and freedom, together with protection under due process law clause of the 4th, 5th, and 14th Amendment rights of the appellant, and from each and every part thereof, of the said order as final judgment, Judgment, interlocutory judgment and all orders from the actions, starting from the action Index#5610/91 to the final action Index #23514/95 as a whole thereof, and for such other and further relief as this Court deems just and proper. The pro-se plaintiff-appellant did file a Notice of Appeal as of right to this Court, dated April 24, 2003, which was dismissed without costs On June 12, 2003 upon the ground that no substantial constitutional question is directly involved, the said order with notice of entry as mailed to plaintiff-appellant on June 23, 2003, by the opposing party. The Court of Appeals has jurisdiction to review this order because (1). Even though I respect the Lower Court, and the Appellate Court's decision, but, I do believe that the Appellate Court did violate the plaintiff-appellant's individual right

and liberties of the Constitution and the Bill of Rights, when they affirmed the lower Court's ruling and upheld the State Law against her claim when they made their final decision on an interlocutory judgment and not on a final judgment. (2). I also believe that the Appellate Court did violate the due process Clause of the 4th, 5th and 14th Amendment rights of the plaintiff-appellant when they affirmed the ruling of the lower Court with costs on an interlocutory judgment and not on a final judgment and (3). The 14th Amendment of the U. S. Constitution said, "that No State shall deny to any person within its jurisdiction the equal protection of the laws." The Court of Appeals should accept this case for review because (1). I do believe that the plain tiff-appellant does have the due process rights in every aspect of the law. (2). The ruling of the Lower Court and the Appellate Court is prejudiced to the plaintiff-appellant, since they made their ruling on an interlocutory judgment and not on a final judg ment. (3). The attorney defendant did admit that he wrongfully made the execution which caused the eviction of the plaintiff-appellant, and the City Sheriffs did admit that they evicted the plaintiff-appellant, and they also made a false representation when they said that the judgment was a final judgment and that the Supreme Court has issued an order for Ally's eviction, but the judgment was only an interlocutory judgment and not a final judgment and the Supreme Court did not issue a order for the evic tion, so the defendants did not only intrude or trespass and ille-gally evicted the plaintiff -appellant, but they also destroyed her business and robbed her of the contents of the said business pre mises, including her house hold and personal property yet her action was dismissed with costs, when they made the final decision in this action. Plaintiff-appellant do believe that damaging another person's property is against the law, and property damage is a civil tort. So I do believe that the Court of Appeals should accept this case for review

The sworn affidavit which was attached to the plaintiff Ally's notice of motion to the Court of Appeals, summarized the back

ground facts and the procedural history of this action, and since the plaintiff did asked the Court of Appeals to review the inter locutory judgment and allorders pursuant toCPLR5501(a)(1)(2)(3)(4), she produced the forged lease and deposition as evidence of the facts of the deposition of Nazmoon Hassan (original landlord) which her attorney did not produce at the trial, which may have changed the verdict in the interlocutory judgment. On July 2, 1991, a deposition was taken of Mrs Hassan before the trial. Thefacts of the deposition are as follows:-(R105-116:130-144;341-382). On page #18:4-13 (R105:131;347). Mr Futterman asked: "At anytime, was a Miss Ally a tenant of either one of those stores?" Mrs. Hassan said: "Yes." Mr Futterman then asked: "The store that Miss Ally was a tenant of, can you tell us at what premises or at what address it was?" Mrs Hassan said, "At 127-01 Liberty Ave., Rear Store." On page #19:5-259 (R105:131; 348 Mr. Futterman said, "Is it not a fact, that the premises rented to Miss Ally is not listed in paragraph 20 of Exhibit A (contract of sale)?" Mrs Hassan said, "That's correct," Mr. Futterman then said, "So, at the time that the contract of sale was prepared, you did not list the premises leased to Miss Ally, is that correct?" Mrs Hassan said, "No, I didn't. As far as I know-----" Mr Futterman then asked, "Were you aware that there was a lease with Miss Ally?" Mrs Hassan said, "As far as I am concerned, there is no lease with Miss Ally. Just a one-year lease." Mr Futterman then asked, "Do you have a lease which was signed by Miss Ally and someone else, which would indicate that it was a one-year lease?" On page #20:2-25(R106:132;349). Mrs Hassan asked, "Would you repeat that?" Mr Futterman then asked "Do you have a lease between yourself for your husband and Miss Ally?" Mrs Hassan replied,"Yes, I have a copy." (R355-356) Mr Futterman then said, "May I see a copy of that lease that you have." Mrs Hassan then said, "Here." Mr Futterman then said, "With regard of the document just given to me by the witness as being a copy of a lease between Hassan and Ally: I am going to request that this document be marked as defendant's (now plaintiff Ally) Exhibit C for identification, this date. The document is dated April—the date of the signatures is undocu-

mented– but the agreement, as set forth between the landlord and tenant, is April 12th, as indicated on the top portion of the document. We will have it stamped in the lower left, on the rear of the document." On page #21:18-25 (R106:133;350) Mr Futterman asked, "Mrs Hassan, did you ever see the original of Exhibit C?" Mrs Hassan replied, "Yes, I prepared it myself." Mr Futterman then asked, "Now, with regard to that document— meaning the original of the document, and not defendant's Exhibit C itself – did you sign it?" Mrs Hassan then said, "No, I didn't."

On page #22:2-25, and page #23:2-25, (R106:133;351-352) Mr Futterman asked, "Did someone else sign it?" Mrs Hassan an swered, "My husband did." Mr Futterman then asked, "Can you tell us where the original of the document is ?" Mrs Hassan said, "The original of this lease?" Mr Futterman said, "Yes, the lease that we've offered as defendant's Exhibit C." Mrs Hassan said, "I gave it to Ackleema Ally." Mr Futterman asked, "After you gave it to Ackleema Ally, did she ever give it back to you?" Mrs Hassan asked, "The original?" Mr Futterman said, "Yes. The original. After you gave her the original, did she ever give it back to you?" Mrs Hassan said, "No." Mr Futterman then asked, "When you gave this document to Ackleema Ally, was your husband's signature on the document?" Mrs Hassan replied, "Yes." Mr Futterman asked, "When you gave it to her the first time, was your husband's signature on the document?" Mrs Hassan asked, "What document— the first time?" Mr Futterman then asked, "Did you give it to her only once, or more than once?" Mrs Hassan replied, "Once." Mr Futterman then asked, "When did you give the original of this document to her?" Mrs Hassan answered, "Right after my husband signed it, in front of the notary public. And we handed it to her. We made two copies--I made two copies--we gave her the original." Mr Futterman asked, "Did she sign it after you gave her the original?" Mrs Hassan replied, "No." Mr Futterman then asked, "When did he sign that document, if at all?" On page #24:2-25,(R107:134;353) Mrs Has san replied, "She signed it in front of a notary public." Mr Fut terman then asked, "It is your testimony, that Miss Ally signed

this document in the presence of a notary public. Is that correct?" Mrs Hassan replied, "Yes." Mr Futterman then asked, "Is it your testimony, that your husband signed this document in the presence of a notary public?" Mrs Hassan replied, "Yes." Mr Futterman asked, "Where was the notary public located?" Mrs Hassan replied, "On Liberty Avenue. I cannot remember the address." Mr Futterman asked, "Who was present, at that time, when the document was signed before the notary public? Were you there?" Mrs Hassan replied, "I cannot remember if I was there." Mr Futterman asked, "May I inquire as to why you did not sign that document, the lease, defendant's exhibit C?" Mrs Hassan asked, "Why I didn't sign it?"

On page #25:4-25, (R107:135;354) Mr Futterman then asked Mrs Hassan, "Does your signature appear anywhere on that document, Exhibit C?" Mrs Hassan answered, "No." Mr Futterman then asked, "Whose signature, as far as the landlord is concerned, appears on that document?" Mrs Hassan replied, "My husband." Mr Futterman then asked, now, you say you prepared that document. Is that correct?" Mrs Hassan replied, "Yes." Mr Futterman asked, "When you prepared the document, was the language the same as it is on that copy?" Mrs Hassan replied, "Yes." Mr Futterman asked, "No difference whatsoever, is that correct?" Mrs Hassan replied, "No difference.No." Mr Futterman then said, "I am going to make a photocopy of this document now."On page#26:2-25,#27:2-25,and #28:2-25,#29:2-25(R108:136 357-360;355-356) Mr Futterman then said to Mrs Hassan, "I've given you a red pen. Please outline every-thing that you wrote in your own hand on the original, which is shown on this copy marked as defendant's Exhibit C." Mrs Hassan said, "All right." Mr Futterman then said, "The record will indicate, that Mrs Hassan, with a red pen, is marking a copy of Exhibit C, and is circling those areas which she wrote in her own hand. Is there anything on the back that you wrote in your own hand, ma'am?" Mrs Hassan replied, "No." Mr Futterman said, "Now, according to the circled writing on this document, you wrote "April 12, 1986" at the top. Is that correct?" Mrs Hassan replied, "Yes."

Mr Futterman then said, "According to this document, you wrote the address "127-01 Liberty Avenue, Richmond Hill, New York," and zip code. Is that correct?" Mrs Hassan answered, "Yes." Mr Futterman then asked, "And you also wrote the terms "One year's rent, $4800, beginning April 15, 1986, at a monthly rental of $400, ending on April 15, 1986, with security of $400." Did you write that?" Mrs Hassan answered, "Yes." Mr Futterman asked, ' Did you circle that, also?" Mrs Hassan answered, "Yes." Mr Futterman then asked, "Now, when you prepared this document, defendant's (Ally) exhibit C, what did you do with it?" Mrs Hassan replied, "I gave it to my husband." Mr Futterman then asked, "And your husband went someplace with the document, didn't he?" Mrs Hassan then replied, "Yes." Mr Futterman asked, "At the time you prepared that document, and before you gave it to your husband, Miss Ally had not signed the document, had she. Is that correct?" Mrs Hassan said "No, She had not." Mr Futterman then asked, "When you gave that document to your husband, could you tell us for what purpose you gave it to him." Mrs Hassan replied, "To have it notarized." Mr Futterman then asked, did you give it to your husband also for the purpose of having the tenant sign her name?" Mrs Hassan replied, "Yes." Mr Futterman then asked,"Now, when you said before, that Miss Ally and your husband went before a notary public when the document was signed, do you know that of your own knowledge, or did someone tell you that?" Mrs Hassan replied, "My husband told me." Mr Futterman asked, I show you defendant's (Ally) (R355-356)where you circled in red pen the handwritten portions Does it appear anywhere on that document that anyone's signature other than your husband's signature is being notarized?" Mrs Hassan replied, "Yes, Ackleema--"

On page #30:2-25;#31:2-25;#32:2-25,(R109:137;361-363)), Mr Futterman asked, "Now, did there come a time, that your husband brought that document back to you? Meaning defendant's (Ally) exhibit C." Mrs Hassan replied, "Yes. He brought it home that night and gave it to me." Mr Futterman then asked, "What day was that? If you know." Mrs Hassan said, the following day."

Mr Futterman asked, "Was that document prepared by you on April 12, 1986?" Mrs Hassan answered, "Yes." Mr Futterman then asked, "It is your testimony, that on April 13, 1986, you received the document back from your husband. Is that correct?" Mrs Hassan replied, "Yes." Mr Futterman then said, "Now, in looking over the document, defendant's exhibit C, the original of which you claim you prepared: It appears from the writing, that the lease begins on April 15, 1986, and ends on April 15, 1986 Is that correct?" Mrs Hassan answered, "Yes,it does." Mr Futterman then asked, "Was this lease to be for one day? Just "Yes" or "No" Mrs Hassan said, "No." Mr Futterman asked, "The document which has been marked as defendant's (Ally) exhibit C for identification: Has that document ever been altered, in any way what so ever; by omission, or obliteration, or addition, for example? Just "Yes" or "No." Mrs Hassan then said, "Rephrase that, please." Mr Futterman then asked, "Has the document ever been altered." Mr Plever (Mrs Hassan's attorney) said, "Changed," Mr Futterman then said, "Yes. Changed: Whited-out. Or anything like that." Mrs Hassan answered, "Yes. It has." Mr Futterman asked, "Could you please tell me what portion of that document has been whited-out or altered." Mrs Hassan then said, "No, No, Not mine." An order was then signed by Mr Stuart M. Cohen, the Clerk of the State of New York, Court of Appeals which said as follows: A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been there upon had, it is Ordered, that the said motion be and the same hereby is denied.(R116:145;383).

This action was then commenced in the United States District Court, Eastern District summons and verified complaint with attached exhibits as evidence on October 24, 2003(R61-383;D#1) under original proceeding, a letter (R399;D#13) from defendant Richard S. Graver to Honorable Judge Nina Gershon dated November 20, 2003, requesting that, "a conference to be scheduled for the purpose of helping the plaintiff (Ally) understand that it is in

her best interest to discontinue this complaint with prejudice and refrain from commencing any further actions against these defen dants." was received by plaintiff Ally on November 28, 2003, a letter dated December 1, 2003 (R408;D#7) was mailed to Hon orable Judge Gershon from plaintiff Ally in reply to defendant Graver's letter, but Honorable Judge Nina Gershon had already dismissed plaintiff-appellant Ally's verified complaint by a memo randum and order dated November 24, 2003 (R#401;D#2) which was entered on November 26, 2003 and received by plaintiff on December 6, 2003, which said, "plaintiff's complaint is dismiss-ed for lack of subject matter jurisdiction. Fed.R. Civ. P.12 (h)(3). The Court certifies pursuant to 28 U.S.C# 1915(a)(3) that any appeal would not be taken in good faith and therefore in forma pauperis status is denied for purpose of an appeal. Coppedge v United States, 369 U.S. 438, 444-45(1962), a civil judgment was entered on November 26, 2003 (R404), and another civil judg-ment was entered on December 1, 2003, (R#406;D#3), which said, "That the complaint is hereby dismissed. The Court certi-fies pursuant to 28 U.S.C# 1915(a)(3) that any appeal from the court's order would not be taken in good faith." then a Judgment 03-cv-5380(NG) dated December 3, 2003 was entered on Dec-ember 4, 2003, (R407;D#4) which said. "A Memorandum and Order of Honorable Nina Gershon, United Stated District Judge, having been filed on November 26, 2003, dismissing plaintiff's complaint, for lack of subject matter jurisdiction; certifying pur-suant to 28 U.S.C#1915(a)(3) that any appeal from the Court's Memorandum and Order would not be taken in good faith, and denying in forma pauperis status for purpose of an appeal; it is Ordered and adjudged that plaintiff take nothing of the defen-dants; that plaintiff's complaint is dismissed for lack of sub-ject matter jurisdiction; that any appeal from the Court's Memo-randum and Order would not be taken in good faith, pursuant to 28 U.S.C#1915(a)(3) and that in forma pauperis status is denied for purpose of an appeal. A notice of Appeal was then filed on December 22, 2003 (R#412;D#10), a Notice of Corrected judg-ment was entered on December 1, 2003, (R#406; D#3), which said, "That the complaint is hereby dismissed. The Court certi-

fies pursuant to 28 U.S.C# 1915(a)(3) that any appeal from the court's order would not be taken in good faith. "then a Judgment 03-cv-5380(NG) dated December 3, 2003 was entered on Decem ber 4, 2003,(R407;D#4) which said. "A Memorandum and Order of Honorable Nina Gershon, United Stated District Judge, having been filed on November 26, 2003, dismissing plaintiff's complaint, for lack of subject matter jurisdiction; certifying pursuant to 28 U.S.C#1915 (a)(3) that any appeal from the Court's Memorandum and Order would not be taken in good faith, and denying informa pauperis status for purpose of an appeal; it is Ordered and adjudged that plaintiff take nothing of the defendants; that plaintiff's complaint is dismissed, for lack of subject matter jurisdiction; that any appeal from the Court's Memorandum and Order would not be taken in good faith, pursuant to 28 U.S.C #1915(a)(3) and that informa pauperis status is denied for pur pose of an appeal. A notice of Appeal was then filed on Decem ber 22, 2003 (R#412;D#10), a Notice of Corrected date of Notice of Appeal was also filed on December 26 (R#449), and an Amended Notice of Appeal was filed on May19, 2004;D#17

ARGUMENT

#1

THE U.S. EASTERN DISTRICT COURT ERRED IN DISMISSING PLAINTIFF - APPELLANT ALLY'S VERIFIED COMPLAINT WITH ATTACHED EXHI BITS FOR LACK OF SUBJECT MATTER JURIS DICTION SINCE THE COURT'S RULING DID NOT MAKE ANY REFERENCE OF THE FACT THAT THE VERIFIED COMPLAINT WITH EXHI BITS WAS FILED UNDER ORIGINAL PROCEED- ING WHICH IS PURSUANT TO ARTICLE 111 OF THE CONSTITTUTION, HENSE THIS ACTION IS NOT LACK OF SUBJECT MATTER JURISDICTION.

A. Pursuant To U.S.C.A#28:1331:- The District Courts Shall Have Original Jurisdiction Of All Civil Actions Arising Under The Constitution, Laws, Or Treaties Of The United States.

Pursuant To U.S.C.A.28#1331: Where a City in the exercise of delegated State Powers, Transgresses The Federal Constitution, the Federal Courts have jurisdiction, though the act is not authorizedor may have been forbidden by the State. Portland Ry., Light & Power Co., v City Of Portland, D. C. Or. 914, 210F.667.

The U. S. Eastern District Court made no reference of the fact that the Civil Cover Sheet specify that the nature of the suit is Constitutionality Statutes; other Statutory Actions and on The Basis Of Federal Question Jurisdiction, therefore, this action is not lack of subject matter jurisdiction.

#2.

THE U.S. EASTERN DISTRICT COURT ERRED IN DISMISSING PLAINTIFF - APPELLANT ALLY'S VERIFIED COMPLAINT WITH ATTACHED EXHIBITS FOR LACK OF SUBJECT MATTER JURISDICTION, WHEN THE COURT CONFIRMED IN THE MEMORANDUM AND ORDER THAT PLAINTIFF SEEKS DAMAGES OF FORTY MILLION DOLLARS,BUT MADE NO REFERENCE OF THAT FACT IN THE CIVIL JUDGMENT OR JUDGMENT,HENCE THIS ACTION IS NOT LACK OF SUBJECT MATTER JURISDICTION

B. And Pursuant To U.S.C.A#28:1332:- The District Courts Shall Have Original Jurisdiction Of All Civil Actions Where The Matter In Controversy Exceeds The Sum Or Value Of $75,000.

The U.S. Eas[illegible]District Court did confirm in the memorandum and order that plaintiff Ally seeks damages of for -ty million dollars, but made no reference of that fact in the civil judgment or the judgment, and plaintiff claim fordamagesis approximately $40,000,000.00,therefore,this action is not lack of subject matter jurisdiction.

#3.

THE U.S. EASTERN DISTRICT COURT ERRED IN DISMISSING PLAINTIFF - APPELLANT ALLY'S VERIFIED COMPLAINT WITH ATTACHED EXHIBITS FOR LACK OF SUBJECT MATTER JURISDICTION, SINCE THE COURT'S RULING MADE NO REFERENCE OF THE FACT, THAT PLAINTIFF DID ATTACHED TO HER COMPLAINT HER PRIMA FACIE EVIDENCE TO PROVE THE FACTS ON HER VERIFIED COMPLAINT, HENCE THIS ACTION IS NOT LACK OF SUBJECT MATTER JURISDICTION

C. Pursuant ToFPLR12#610Which Said That, "A complaint Should Not Be Dismissed For Failure To StateA Claim Unless It Appears Beyond A Doubt That The Plaintiff Can Prove No Set Of Facts In Support Of A Claim That Would Entitle Him To Relief And If Plaintiff Is Filing Pro-Se, Court Should Construe Complaint Broadly, And Not Hold It To The Same Standards As Complaint Drafted By An Attorney. Young v Calhoun S. D. N. Y. 1987, 656 F. Supp. 970.

Pursuant to FPLR 12#610 which said that, pro-se complaint alleging deprivation of rights under color of state law should not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Hudspeth v Figgins,

C.A.Va. 1978, 584 F.2d 1345, certiorari denied 99 S.Ct. 2013,444 U.S. 913, 60 L.Ed 2d.386.

Pursuant to FPLR 12#341 which said that, " Complaint should not be dismissed for lack of subject-matter jurisdiction, if it reveals that any ground for jurisdiction exists.Jorsch v Le Beau, D.C. Ill.1978, 449 F. Supp.485.

The U.S. Eastern District Court made no reference of the fact that the plaintiff-appellant did attached her prima facie evidence to her verified complaint to prove the facts on her verified complaint and a verified complaint may be considered equivalent to affidavit of merit, there fore, this action is not lack of subject matter jurisdiction.

#4.

THE U.S. EASTERN DISTRICT COURT ERRED IN DISMISSING PLAINTIFF - APPELLANT ALLY'S VERIFIED COMPLAINT WITH ATTACHED EXHIBITS FOR LACK OF SUBJECT MATTER JURISDICTION, SINCE THE COURT'S RULING MADE NO REFERENCE OF THE FACT THAT THE DEFENDANTS DEPRIVED THE PLAINTIFF OF HER PROPERTY WITHOUT DUE PROCESS OF THE LAW, WHICH IMPAIR THE OBLIGATION OF HER CON TRACT, AND WITHOUT JUST COMPENSATION, HENCE THIS ACTION IS NOT LACK OF SUBJECT MATTER JURISDICTION

C. Pursuant To U.S.C.A#28:1331:211:-An Allegation That A City Intended Forcibly To Remove A Transmission Wire Belonging To Complainants, Who Had A Perpetual Fran chise To Use The Streets, And Thereby To Deprive Com plainants Of Their Property Without Due Process Of Law And To Impair The Obligation Of Their Contract, Presen ted A Substantial Claim Under The Constitution,Sufficient

To Sustain The Jurisdiction Of The United States Court. South Covington & C. St.Ry. Co. v City Of Newport,KY. 1922, 42 S.Ct. 418, 259 U.S. 97, 66 L.Ed; 842.

Pursuant to U.S.C.A #28:1331:215:- Question of whether property was taken without due process or just compensation constitutes a "Federal Question" within jurisdictional statute. Jim Young Development Corp. v State Highway commission of Mo., D.C.Mo.1971, 56 F. R.D38.

The U.S. Eastern District Court made no reference of The fact that the defendants did deprive the plaintiff-appellant Ally of her business and property without due process of the law when they illegally evicted her from her business premises, without serving an eviction notice, which impaired the obligation of her contract, and on account of that illegal eviction she lose her business.

Pursuant ToFPLR12#610Which Said That,"Acomplaint Should Not Be Dismissed For Failure To State A Claim Unless It Appears Beyond A Doubt That The Plaintiff Can Prove No Set Of Facts In Support Of A ClaimThat Would Entitle Him To Relief And If Plaintiff Is Filing Pro-Se, Court Should Construe Complaint Broadly, And Not Hold It To The Same Standards As Complaint Drafted By An Attorney. Young v Calhoun S. D. N. Y. 1987, 656 F. Supp. 970.

Pursuant to FPLR 12#610 which said that, pro-se complaint alleging deprivation ofrights under color of state law should not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Hudspeth v Figgins, C.A.Va. 1978, 584 F.2d 1345, certiorari denied 99 S.Ct. 2013,444 U.S.

913, 60 L.Ed 2d.386.

Pursuant to FPLR 12#341 which said that, " Complaint should not be dismissed for lack of subject-matter jurisdiction, if it reveals that any ground for jurisdiction exists.Jorsch v Le Beau, D.C. Ill.1978, 449 F. Supp.485.

The U.S. Eastern District Court made no reference of the fact that the plaintiff-appellant did attached her prima facie evidence to her verified complaintto prove the facts on her verified complaint and a verified complaint may be considered equivalent to affidavit of merit,therefore,this action is not lack of subject matter jurisdiction. and all the contents of the said business premises which include the stocks, machinery, equipments, fixtures fittings. etc) and all of her household and personal property, and it was very sad and heart breaking for her to see all that she had accumulated all her life were willfully and maliciously destroyed and removed except for 2 pairs of shoes, a few pieces of clothing and her case materials, which she had with her, therefore, this action is not lack of subject matter jurisdiction.

Pursuant to U.S.C.A #28:1331:247:- If state legislation impaired the obligation ofa contract or deprived of property without due process of law, or denied the equal protection of the laws, remedies were found in former #41(1) of this title. Holt v Indiana Mfg. Co., Ind.1900 20 S. Ct.272, 176 U.S.68, 44 L.Ed.374.

#4.

THE U.S. EASTERN DISTRICT COURT ERRED IN DISMISSING PLAINTIFF - APPELLANT ALLY'S VERIFIED COMPLAINT WITH ATTACHED EXHIBITS FOR LACK OF SUBJECT MATTER JURISDICTION, SINCE THE COURT'S RULING MADE NO REFERENCE OF THE FACT THAT THE DEFEN-

DANTS DEPRIVED THE PLAINTIFF OF HER PROPERTY WITHOUT DUE PROCESS OF THE LAW, WHICH IMPAIR THE OBLIGATION OF HER CONTRACT, AND WITHOUT JUST COMPENSATION, HENCE THIS ACTION IS NOT LACK OF SUBJECT MATTER JURISDICTION

D. Pursuant To U.S.C.A#28:1331:211:- AnAllegationThatACity Intended Forcibly To Remove A Transmission Wire Belonging To Complainants, Who Had A Perpetual Franchise To Use The Streets, And Thereby To Deprive Complainants Of Their Property Without Due Process Of Law And To Impair The Obligation Of Their Contract, Presented A Substantial Claim Under The Constitution, Sufficient To Sustain The Jurisdiction Of The United States Court. South Covington & C. St. Ry. Co. v City Of Newport, KY.1922,42 S.Ct. 418, 259 U.S. 97, 66 L.Ed; 842.

Pursuant to U.S.C.A #28:1331:215:-Question of whether property was taken without due process or just compensation constitutes a "Federal Question"within jurisdictional statute.Jim Young Development Corp.v State Highway commission of Mo., D.C.Mo. 1971, 56 F. R.D38.

The U.S. Eastern District Court made no reference of the fact that the defendants did deprive the plaintiff-appellant Ally of her business and property without due process Of the Law, and which impaired the obligation of her Contract and on account of that illegal eviction she lose her business and all the contents of the said business premises which include the stocks, machinery, equipments, fixtures fittings. etc) and all of her household and personal property, and it was very sad and heart breaking for her to see all that she had a ccumulated all her life were fully and maliciously destroyed and removed except for 2

pairs of shoes, a few pieces of clothing and her case materials, which she had with her. therefore, this action is no lack of subject matter jurisdiction.

Pursuant to U.S.C.A #28:1331:247:- If state legislation impaired the obligation ofa contract or deprived of property without due process of law, or denied the equal protection of the laws, remedies were found in former #41(1) of this title. Holt v Indiana Mfg. Co., Ind.1900 20 S. Ct.272, 176 U.S.68, 44 L.Ed.374.

#5.

THE U.S. EASTERN DISTRICT COURT ERRED IN DISMISSING PLAINTIFF - APPELLANT ALLY'S VERIFIED COMPLAINT WITH ATTACHED EXHIBITS FOR LACK OF SUBJECT MATTER JURISDICTION, SINCE, THE COURT CONFIRMED IN THE MEMORANDUM AND ORDER THAT PLAINTIFF'S CASE WAS HEAVILY LITIGATED IN THE COURTS OF NEW YORK, BUT MADE NO REFERENCE OF THE FACT THAT THE PLAINTIFF APPELLANT WAS DENIED THE EQUAL PROTECTION OF THE LAW, HENCE THIS ACTION IS NOT LACK OF SUBJECT MATTER JURISDICTION

E. Also, Pursuant ToU.S.C.A#28:1343(a)(1)(2)(3):- TheDistrict Courts Shall Have Original Jurisdiction Of Any Civil Action Authorized By Law To Be Commenced By Any Person:(1). To Recover Damages For InjuryTo His Person Or Property, Or Be cause Of The Deprivation Of Any Right Or Privilege Of A Citizen Of The United States, By Any Act Done In Furtherance Of Any Conspiracy Mentioned In Section 1985 Of Title 42;(2). To Recover Damages From Any Person Who Fails To Prevent Or To Aid In Preventing Any Wrongs Mentioned In Section 1985 Of Title 42 Which He Had Knowledge Were About To Occur

And Power To Prevent; (3). To Redress The Deprivation, Under Color Of Any State Law, Statute, Ordinance, Regulation, Custom Or Usage, Of Any Right, PrivilegeOr Immunity Secured By The Constitution Of The United States Or By Any Act Of Congress Providing For Equal Rights Of Citizens Or Of All Persons Within The Jurisdiction Of The United States.

Pursuant to USC#28:1331:- Provision of former #41 (1) of this title, giving federal district courts jurisdiction of suits of civil nature where matter in controversy exceed ed, exclusive of interest and costs, the sum of $3,000 and arose under Constitution or laws of United States and #1983 of Title 42 granting jurisdiction of suits by any person to redress the deprivation, under color of any law, statute, or ordinance, of any right, privilege or immunity secured by Constitution of United States had to be read together and neither was to be interpreted as abolishing the other. Hague v. Committeefor Industrial Organization, N.J. 1939, 59 S.Ct. 954, 307 U.S. 496, 83 L. Ed.1423.

Pursuant toU.S.C.A #28:1331:150 which said that, "Fed eral district court had subject matter jurisdiction over dis charged village police chief's action against village and police committee, in view of fact that complaint alleged violation of police chief's right to due process under U.S. C.A. Const. Amend. 14, and amount in controversy was in excess of $10,000. Starke v Bergles, D.C. Wis. 1978 444 F. Supp. 469.

Pursuant to U.S.C.A #28:1331:-Where state officials, purporting to act under state Authority, invade rights secured by U.S.C.A. Constitution., they are subject to pro cess of federal courts in order that persons injured may have appropriate relief. Hoffman v Stevens. D. C. Pa. 1959, 177 F.Supp.898.

The U.S. Eastern District Court did confirm that actions were brought in the N.Y. State Courts in the memorandum and order but made no reference of the fact that instead of the plaintiff-appellant Ally being compensated for the wrongs that was done, she was sanctioned by the lower courts, therefore, this action is not lack of subject matter jurisdiction.

Appellant Ally do believe that her papers present no material issue of the facts, and that the facts and the prima facie evidence are clearly as the movant claims them to be, therefore let the papers speaks for itself.

CONCLUSION

I, therefore respectfully requested that this Court reverse the Judgment entered herein, with a finding of fact in favor of the appellant; and order the defendants to pay the plaintiff-appellant Ackleema Ally, for the destruction of her business and all the contents of the said business premises which include all of her house hold and personal property; and for punitive damages; financial business loss, loss of income, loss of future income; emotional upset and distress; fees together with costs and disbursements and interest thereon and for such other and further relief that this Court deems just and proper, or if the court does not feel that it would be justified by the facts in so doing, then should remand the case for a fair and impartial trial, on proper evidence as the law may deem just and proper, and to reverse the orders and Judgments of the lower courts, because appellant believes that she should not have to pay costs and attorney fees or sanctions to the said defendants because her cause of action is not frivolous,and for such other and further relief as this Court deems just and proper.

Respectfully submitted

Discussion

In October 2003, plaintiff-appellant Ackleema Ally,pro-se, filed a civil complaint seeking damagesof approximately $40million against various defendants for the violation of Section 853 of the New York Real Property Actions and Proceedings Law. In November 2003, the United District Court for the Eastern District of New York sua sponte dismissed the complaint on the Grounds of lack of subject matter jurisdiction, pursuant to Rule 12(h)(3)of the Federal Rules of Civil Procedure

We review orders dismissing complaints for lackof subject matter jurisdiction de novo. See S.E.C. v. Berger, 322 F.3d 187, 191(2d Cir. 2003). Although we construe a pro-se plaintiff's complaint liberally, see Graham v. Henderson, 89 F.3d 75,79 (2d Cir.1996), a plaintiff attempting to bring a case in federal court must still comply with the relevant rules of procedural an substantive law, including establishing that the court has subject matter jurisdiction over the action. See Traguth v, Zuck, 710 F.2d 90, 95 (2d Cir. 1983).

The district court concluded that it lacked subject matter juris diction for two reasons: First, pursuant to the Rooker-Feldman doctrine, see Rooker v, Fidelity Trust Co., 263 U.S. 413, 415-16 (1923); District of Colombia Court of Appeals v. Feldman, 460 U.S.462, 486-87 (1983),it did not have jurisdiction over claims that effectively challenge state court judgments; and, second Ally's complaint fails to establish federal question jurisdiction in that her claims,which are based on a landlord-tenant dispute, are fundamentally a matter of state, and not federal, law. Because the jurisdiction of the federal courts is limited and does not extend to the claims inthis case,the district court was correct in dismissing Ally's complaint. Even though Ally has attempted to state her claims in order to make them appear to arise under the U. S. Constitution, the "essence" of her claims remains un changed. Anderson v Bowen, 881 F. 2d 1, 5 (2d Cir. 1989). Her complaint arises out ofa landlord-tenant dispute over which the

federal courts simply have no jurisdiction. See DiNapoli, v. Di Napoli, No. 95 Civ. 7872, 1995 WL 555740, at *1, 1995 U.S. Dist. LEXIS 13522,at *4 (S.D.N.Y. Sept.19,1995). "Where juris diction is lacking...dismissal is manadatory." United Food & Commercial Workers Union, Local 919,AFL-CIO v. CenterMark Properties Meriden Square, Inc., 30 F.3d 298, 301 (2d Cir. 1994). Thus, we are unable to adjudicate the merits of Ally's case, and must affirm the district court's dismissal of her complaint.

Moreover, we agree with the district court's decision to deny Ally leave to amend her complaint after concluding that any Amendment could not save Ally's complaint from dismissal for lack of subject matter jurisdiction.

Accordingly, the judgment of the district court is hereby AFFIRMED

FOR THE COOURT
Roseann B. MacKechnie, Clerk

By: Lucille Carr
4/19/05

APPENDIX E

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

[Filed April 19,2005]

No. 04-0665-cv

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff-Appellant

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants-Appellees

PETITION FOR REHEARING AND
FOR EN BANC CONSIDERATION

Appeal from Federal District Court for the
Eastern District of New York

Judge Nina Gershon

Richard S Graver, Et al
Respondent
48 Ledge Crest Road
Scarsdale
New York 10583

Ackleema Ally
pro-se Appellee
696 Ilyssa Way
Staten Island
New York 10312

PETITION FOR REHEARING

I, Ackleema Ally the pro-se plaintiff-appellant, doing business as Ahmad Meat Market herein, sets forth and alleges in my Petition for Rehearing the following facts and circumstances herein, and sworn under the penalty of perjury. On April 22, 2005, I received a Summary Order from this Court, and I do believe that this Court did overlooked approximately two (2) very important points of fact so in support of this petition my first point of fact that I would like to bring to this Court's attention is that all the documents that I have filed in this Court and the U.S. District Court have five defendants and the names are: #1. Richard S. Graver, #2. Sheriff Kerry J. Katsorhis, #3. Deputy Sheriff Martello, #4. Chandra Kishore a/k/a Ralph Sukhoo, and #5. Prabha Palmour, a/k/a Rosaline Sukhoo, but on the order it seems to me that there are approximately eight defendants. Defendants on order:- #1. Claris Ramos Sukkar, who is she? I do not know her and I am not suing her. #2. Ralph Sukhoo, I do know him and I am suing him, he and #8 defendant Chandra Kishore is the same person . #3. Rosaline Sukhoo, I do know her and I am suing her, she is also known as Prabha Palmour but Prabha Palmour is not on the order. #4. Sheriff Kerry J. Katshoris, I do not know him and I am not suing him. I am suing Sheriff Kerry J. Katsorhis #5. Richard D. Graver, I do not know him and I am not suing him. I am suing Richard S Graver. #6. Deputy Sheriff Martello, I do know her and I am suing her.#7 Deputy Sheriff, I do not know him, I do not know who this is referring to. See Ann. Exhibit A. Is this a new court rule? that the names of the defendants who we are suing can be taken out and the defendants that the court chooses can be put on our papers.

should the Court grant me judgment in this action where would I find some of those people? I received a letter dated April 14, 2004 from M/s Anna Steglich informing me that the caption has been changed. Ann. Exh B. I then called M/s Steglich and I told her that I cannot use that caption because:(1).My name is not correctly spelt. and (2). The names of the defendants are not correct, she then told me to let the U.S. Eastern District Court know that. I then went to the U. S. Eastern District Court I told them and I also filed a sworn affidavit. Ann. Exh. C, and now I am still surprised to see that the caption is still not corrected,I the plaintiff-appellant Ally is respect fully requesting thatthis Court look into this matter for me,because this is prejudiced to me.

Point of Facts #2: This action hastwo parts,the first part is a land -lord and tenant action which was filed pursuant toArticle111of the U. S Constitution which gives this court jurisdiction to review and I also site Article 6 which makes the State Court Judges bound by theUnited States Constitution, but the second part was filed under the Constitutional and Federal Laws since the nature of the suit is Constitutionality Statutes; other Statutory Action, and on the basis of Federal Question Jurisdiction and the cause of action was filed under 28 U.S.C.A#1331, and pursuant to 28U.S.C.A#1331 which said that, "Where a City in the exercise of delegated state powers, transgresses the Federal Constitution,the FederalCourts have jurisdiction, though the act is not authorized or may have been forbiden by the state. Portland Ry.,Light & Power Co. v. City of Portland, D.C.Or. 1914, 210F. 667. Pursuant to U.S.C.A. 28 #1331 which said that, "Federal District Court had subject matter jurisdiction over plaintiff's complaint against city, its officials agents and employees which complaint alleged claim against municipal defen dants arising under U.S.C. Const. Amendment 14 and sought both injunctivetive relief and damages in excess of $10,000.00, American Civil Liberties Union v City of Chicago, D.C. Ill. 1976, 431 F. Supp.25 and the claim for damages in this action is approxi Mately $40,000,000 (Forty Million Dollars).

Also, pursuant to U.S.C.A.28#1331 which said that, "When complaint alleges that a municipality or other government entity itself

acts in violation of the Constitution, subject matter jurisdiction is present under this section if the jurisdictional amount is met. Dr. Martin Luther King, Jr. Movement Inc. v. City of Chicago, D.C. Ill. 1977, 435 F. Supp.1289. Pursuant toU.S.C.A.#1331which said that, Federal District Court had subject matter jurisdiction over discharged village police chief's action against village and police committee ,inview of fact that complaint alleged violation of police chief's right to due process under U.S.C.A. Const. Amend.14, and amount in controversy was in excess of $10,000. Starke v Bergles D.C.Wis. 1978, 444 F. Supp.469. Pursuant to FPLR 12#341 which said that, "Complaint should not be dismissed of lack of subject-matter jurisdiction, if it reveals that any ground for jurisdiction exists. Jorsch v Le Beau, D.C. Ill. 1978, 449 F. Supp. 485. However, pursuant to FPLR 12 #610 which said that, "A complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of a claim that would entitle him to relief and if plaintiff is filing pro-se, court should construe complaint broadly, and not hold it to the same standards as complaint drafted by an attorney. Young v Calhoun S D.N.Y. 1987, 656F. Supp. 970. And also pursuant to FPLR 12#610 which said that, pro-se complaint alleging deprivation of rights under color of state law should not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Hudspeth v Figgins, C.A.Va.1978, 584 F.2d 1345, certiorari denied 99 S. Ct. 2013, 444 U.S. 913, 60 L.Ed 2d.386.

Also pursuant to U.S.C.A. 28 #1331 which said that, "An allegation that a city intended forcibly to remove a transmission wire belonging to complainants who had a perpetual franchise to use the streets, and thereby to deprive complainants of their property without due process of law and to impair the obligation of their contract, presented a substantial claim under the Constitution, sufficient to sustain jurisdiction of the United States Court. South Covington & C. St. Ry.Co. v City of Newport, Ky. 1922, 42 S.Ct. 418, 259 U.S. 97, 66 L.Ed. 842. Pursuant to U.S.C.A. 28#1331 which said that, Question of whether property was taken without due process or

just compensation constitutes a "Federal question within jurisdictional Statute. Jim Young Development Corp.v State Highway Commission of Mo., D.C.Mo.1971, 56 F. rd 38. Pursuant to U. S.C.A 28#1331 which said that, "If state legislation impaired the obligation of a contract or deprived of property without due process of law, ordenied the equal protection of the laws, remedies were found in former #41(1) of this title. Holt v Indiana Mfg.Co., Ind.1900,20 S. Ct. 272, 176 U.S. 68, 44 L. Ed. 374.

1st Part Of This Action: A Landlord And Tenant Action

This action started on March 10, 1988 as a landlord and tenant action by plaintiff-appellant Ally against Nazmoon Hassan the original landlord, when she violated Section 853 of the Real Property Actions and Proceedings Law, and illegally and unlawfully evicted Ally from her business premises127-01 Liberty Avenue also known as 103-25 127 Street, Richmond Hill, County of Queens, New York 11419 and on March 16, 1988 the building was sold to Chandra Kishore and Prabha Palmour, a/k/a Ralph Sukhoo and Rosaline Sukhoo. On June 30, 1988 plaintiff Ally was granted temporary possession of the said business premises by an order made by Honorable Judge Rutledge entitling the plaintiff-appellant to break the locks and enter the premises with the help of the police. R#128. During the month of October 1988 the plaintiff-appellant bought approximately $8,405 in stock for the store and in November water came down from the above apartment and damaged all the stock that was in the store premises, since that apartment was not occupied by any tenant she informed the said owners (defendants) and they said that they do not care. R#130. On November 29, 1988 the plaintiff-appellant Ally was permanently restored to possession by Hon. Judge Rutledge. Upon information and belief the new owners Kishore and Palmour (now defendants) purchased the said building subject to Ally's existing tenancy because they saw all the contents of the said business premises still in there when they inspect ed the business premises before the closing of the sale yet they refused to accept appellant Ally's rent and they willfully and maliciously destroyed her business premises and all the contents when they caused to remain open a notorious and dangerous and

defective, unsafe and unhealthy condition of a opening of the roof over Ally's store which caused an unhealthy condition so that she could not enter her business premises or continue with her business.R#138. With respect to eviction proceeding tenant was entitled to protection of federally secured procedural due process an essential part of which was either actual notice thereof or constructive notice reasonably calculated under all circumstances to apprise interested parties of pendency of action and afford them an opportunity to present their objections. Carrasco v Klein,D.C.N.Y. 1974, 381 F. Supp.782. The new owners Kishore and Palmour(now defendants) commenced an action in 1991 (Index. No. 5610/91) in the Supreme Court, County of Queens, against the plaintiff-appellant Ally and the original owner of the said business premises, claiming that Ally's lease was forged. The new owners Kishore and Palmour wrote a letter dated March 10, 1993 (R#157) in which they agreed to accept appellant Ally's rent from November 1993 to March 1994 (R#152)and they still refused to repair the damages they did, so plaintiff did the repairs, stocked her store and open for business, after the new owners saw that Ally's store was ready for business, water started to pour down again from the above apart ment which created an unhealthy condition, and damage to the stocks, when appellant Ally spoke to the new owners about the damages, they said that she was crazy, so again the plaintiff-appel lant Ally could not continue with her business.R#180. There was a trial on or around May1994, and even though the said defendants reaffirms the validity of the lease when they accepted the appel lant Ally's rent before the trial yet, the jury said that Ally's lease was altered from a one year lease to an eleven year lease after it was signed by the original owner Kamaral Hassan, but whether Ally had a lease or not she was their tenant because they accepted her rent.

However, a interlocutory judgment was entered confirming that the original owner Nazmoon Hassan did illegally evicted the plaintiff-appellant Ally. There was a trial after that between Ally and Hassan and on January 19, 1996 a judgment was entered granting Ally a money judgment of $3,000 (three thousand) against Hassan. (R#236) That interlocutory judgment was entered on July 15, 1994, restoring the plaintiff Kishore and Palmour(now defendants

to immediate possession, but did not order the plaintiff-appellant Ally to vacate the premises and no warrant was issued for the eviction of Ally. (R#165). Ally had paid her attorney approximate ly $35,000 to represent her but he did not even produce the facts and evidence that was produced at the deposition of the original landlord Nazmoon Hassan which may be would have made the ruling of the jury different. Upon information and belief up to this date April 29, 2005 there is still no final judgment on that action Index #5610/91 between the appellant Ally and the defendants Kishore and Palmour so because of that when Ally filed her notice of Appeal in the New York Court of Appeals pursuant to CPLR 5501(a) she also filed part of the deposition and ask for review of the interlocutory judg ment pursuant to CPLR 5501(a)(1)(2)(3)(4) with a hope that the court will look at the facts and all the evidence including the deposition and make a final decision in that action but the appeal was denied, and it is also for that reason I asked this court to review the interlocutory judgment, pursuant to the Supremacy Clause Art 111, which gives this Court jurisdiction over my action to review, and I also cite Article 6 which makes the State Court Judges bound by the United States Constitution. 2ND Part of this action is a Tort and Contract action; Violation of plaintiff-appellant Ally's 14TH Amend ment Constitutional Right, Violation of the Bill of Rights, of the 4TH Amendment, Violation of the 5TH Amendment the Taking Clause Etc. On or around November 1993 Ackleema Ally repaired her business premises, stocked her store and started her business, (R#180) but in October1994 the building that Ally was living in was sold so on October 15, 1994 Ally packed all of her personal and house-hold property from her apartment into her store premises for a few weeks until she gets her new apartment, she only took with her 2 pairs of shoes, a few pieces of clothing and her case materials. On October 31, 1994 the defendants Kishore and Palmour and their employees forcibly enter Ally's business premises when they broke the locks, entered and stole (burglary)some of Ally's personal pro-perty, household property and other items from the store premises. I et the sworn affidavit of an eye witness and a photo-copy of the pin that was sawed off the lock show the evidence to this fact.

R#185-187.On November 1, 1994 the two (2) workers of the defen -dants were again seen inside the store removing stocks from the shelves, and they were arrested.R#188. Pursuant to Amendment 14 #1 West's F.S.A.#821.18 which forbids one person or persons to trespass upon the property of another with a malicious and mischie -vous intent. Adderley v State of Fla., Fla.1966, 87 S.Ct., 242, 385 U.S.39,17 L.Ed.2d 149 rehearing denied 87 S.Ct.698,385 U.S.1020, 17 L.Ed.2d 559. Pursuant to Amendment 14#1:Ordinance providing that no person, without privilege to do so, shall recklessly enter or remain on land or premises of another. Davis v Johnson D.L. Ohio 1976,424 F. Supp.168. Pursuant to Amendment 14#1: Statute mak -ing a person guilty of second-degree burglary if he enters or re-mains in an occupied structure with intent to commit any crime there in under circumstances not amounting to first-degree burglary.

An execution dated August 5,1994was prepared by the defendant Richard S. Graver and was delivered to the New York City Sheriffs for execution, the said defendant made a false representation author izing the city sheriffs to seizethe plaintiff-appellant Ally's business premises, and that execution was never served onAlly. R#171,how ever, the said defendant did admit that he wrongfully prepared an execution which caused Ally's eviction.R#275: V16. A 72 hour no tice dated August 18,1994was made out by the City Sheriffs, claim-ing that "a final order has been made in the above proceeding (5610 /91) awarding to the plaintiffs (now defendants) possession of the premises now occupied by you at 103-25 127 Street and that an order has been issued commanding the Sherif to remove you there from and put the plaintiffs (now defendants) in possession thereof. R#173. The records will show the fact of the continuous pattern of default and neglect by the said defendants and that the City Sheriffs also made a false representation when they said that a final order has been made in the proceeding, when it is only a interlocutory judgment, and they did not serve the 72 hour notice on the Ally which would have informed her that her business premises would be seized, so that she could seek the protection of the law. There fore, Ally do believe that the said defendants did deprived her of her constitutional right to due process of the laws since due process applies because of its demand for a fair opportunity to obtain an adjudication on the merits, she was denied of the opportunity to be

heard of the substantive due process, which is the basic law of rights and duties in a tort, and contract action, she was also denied the equal protection of the laws accorded her by the 14th Amend ment of the Constitution of the United States which not only deprived her of the right to operate her business but which result in the taking of her liberty and property without just compensation, the obligation of her contract was also impaired, since there is no warrant for the seizure of her business premises. Amendment 14#1does not protect against all deprivation of liberty but protects only against deprivations of liberty accomplished without due pro cess of law. Baker v McCollan, Tex. 1979,99 S.Ct.2689,443U.S. 137, 61 L. Ed. 2d 433, on remand 601 F. ed 903. Pursuant to Amendment 14#1:- Due process of is a summarized constitutional guarantee of respect for those personal immunities which are so rooted in the traditions and conscience of our people as to b ranked as fundamental or are implicit in the concept of ordered liberty. Rochin v People of Cal. Cal.1952, 72 S. Ct. 205,342 U.S. 165, 96 L.Ed.183.

Both the 5th and 14th Amendments protects persons and not groups, that provision in the 14th Amendment prohibits a state from deny ing to any person within its jurisdiction the equal protection of the laws, it requires that persons be given equal protection in the enjoyment of personal rights and the prevention and redress of wrongs. In re- Adoption of Richardson, 252 C.A.2d 222, 9 Cal. Rptr.323 and 334.The Constitutional guarantee of equal protection of the laws is that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty, property and in their pursuit of happiness. People v Jacobs, 27 C.A. 3d 246,103 Cal. Rptr. 536,543. Justice Powell stressed that equal protection is a personal right of an individual to he judged on the basis of individual worth and merit. Pursuant to Amendment 14#1:- Substantive due process rights protected by this Amend ment are not limited to those liberties specifically enumerated in Bill of Rights, but also include those fundamen-tal concept of justice which lie at base of American civil and political institutions. St. Ann v Palisi, C.A.La. 1974, 495 F. 2d 423.

The Court held in Munn v Illinois (1877) that the concept of substantive due process of the law forbade a state to seize private property without just compensation. The very essence of civil liberty certainly consists in the right of every individual to claim the protec -tion of the laws, whenever he receives an injury. See Marbury v Madison. Even though the City Sheriffs did not have a warrant, still on December 14, 1994 they willfully broke the locks and changed the locks on the store premises, they seized the plaintiff-appellant Ally's business and all its contents which include all of her stocks, machinery, equipments, and all of her household and personal property etc. The 4th Amendment protects the rights of the people against unreasonable searches and seizures, and especially since there was no probable cause for the unreasonable seizure of Ally's property, therefore, Ally believe that that was intrusions on individual liberty, and private ownership is an mportant individual liberty. It was very upsetting, sad and heart breaking to see the way they destroyed and removed all that Ally had owned. It took her all her life to accumulate all that she had, and to just stand there helpless and see it all being destroyed was not very easy. The defendants were seen many times willfully and maliciously destroying and removing the contents of the said business premises, including all of appellant Ally's household and personal property, very important documents, school materials, gifts, many, many years of research materials, many books, very old religious books that are being used for research and cannot be easily found, certificates, diplomas, pass ports and other identity documents, immigration papers and many, many, many more. The police were called in many times, but they could not do anything to stop it, because it was seized by the City Sheriffs. Also let the form 064 show the fact that the City Sheriffs did admit that they did seized Ally's business premises. (R#190)

Pursuant to the Fourth Amendment of the U.S.Constitution: This amendment is to be Construed liberally in order to safeguard rights of individuals to privacy of their homes and their places of business as well. U.S. v Perez-Vega, D.C.Puerto Rico,1966,250 F. Supp.429 see also People v Tellez 1968, 73 Cal. Rptr 892, 268 C.A. 2d 375 Pursuant to Amendment 14#1:- Where distraint in form of padlocking of tenant's business precluded tenant's control of goods within store and further denied tenant access to property in which it held

leasehold estate, padlocking of business premises by municipal constable,although temporary, qualified as deprivation of property under Amendment 14#1. Callen v Sherman's Inc 1983, 455 A.2d 1102, 92 N.J.114. Pursuant to Amendment 14#1:- Within this clause "property"is more than the mere thing which a person owns and includes the right to acquire, use, and dispose of it, and these essential attributes of property are protected by the Constitution. Buchanan v Wavley 1917, 38 S.Ct.16, 245 U.S.60, 62 L.Ed.149. Pursuant to Amendment 14#1:-All forms of property are entitled to due process protection. Trapper Brown Const. Co. Inc., v Eletromech Inc., D.C.N.H.1973, 358 F. Supp.105. The right to pri vacy under this Fourth Amendment, is guaranteed against state in vasion by Amendment 14, and must be enforced by same exclu sionary rule found in the Federal Courts. U.S. ex rel. De Forte v Mancusi, C.A.2 (NY) 1967, 379 F.2d 897 Constitutional Law#274 (5). This Fourth Amendment's prohibition against unreasonable searches and seizures is enforceable against the states through Amendment 14. Camara v Municipal Court of City and County of San Francisco, U.S. Cal 1967, 87 S.Ct. 1727.

Generally the Fifth Amendment applies only to evidence of a tes-timonial or communicative nature, whereas the overiding function of this Amendment is to protect personal privacy and dignity against unwarranted intrusion. Government of Virgin Islands v Berni C.A.3 (Virgin Islands) 1969, 412 F. 2d 1055. S and S #26. The general reasonableness standard under this Fourth Amend ment is determined in a prosecution for a Federal offense,by Feder al law, although the acts were by State officers. U.S. v Romero, C. A.10 (N.M) 1973, 484 F 2d 1324. S and S#22. Pursuant to Amend ment 14#1:- This Amendment's prohibition against a state depriv ing "any person of life, liberty, or property, without due process of law" affords not only a procedural guarantee against the depriv ation of "Liberty" but like wise protects substantive aspects of liberty against unconstitutional restriction by state. Kelly v John son, N.Y. 1976, 96 S.Ct.1440, 425 U.S. 238, 47 L. Ed. 2d 708, on remand 543 F.2d 465. Pursuant to Amendment 14#1:- Amend ment 5 prohibition against taking private Property without just compensation applies against the States through Amendment 14. Webb's Fabulous Pharmacies Inc v Beckwith, Fla.1980, 101 S.Ct.

446, 449 U.S. 155, 66 L.Ed.2d 358. The plaintiff appellant Ally do believe that there are 6 key main components of American demo cracy, but the one that I will speak about is individualism. Individualism maintains that citizens have certain rights that the govern ment cannot take away which are called inalienable rights – which include life, liberty, and property, in America it is the Government responsibility to protect that right, and that they cannot take it away. It is argued that government must treat persons on the basis of merit and not on the basis of immutable traits or stereotypes. See Regents of the University of California v Bakke (1978). In Barron v Balti more: Barron said: "What makes a thing true is not who says it, but the evidence for it." If the court examines the facts and the evidence, they will find that the plaintiff-appellant Ally did produced evidence which would make her facts true. Justice Powell stress ed that equal protection is a personal right of an individual to be judged on the basis of individual worth and merit. So since the said defendants didnot deny the allegations and they did not answer the appellant Ally's brief, therefore, Ally do believe that if the allega tions in a complaint can be sustained then a case for relief is established.

By reason of the foregoing the plaintiff-appellant Ackleema Ally is respectfully requesting that this Court rehear her case, because the appellant Ally believes that all the defendants are the fruit of a willful, illegal, collusion, intentional, conversion, negligence, burglary, deliberate, forcibly-entry, trespass, destruction, fraudulent, malicious and tortious acts, unreasonable searches and seizures, violation of plaintiff – appellant Ally's 14th Amendment Constitu tional Rights, Violation of the Bill of Rights, Violation of the 4th Amendment and Violation of the 5th Amendment the Taking Clause, etc., and for which the business suffered and substantially diminished to the point where the plaintiff was effectively put out of business by the seizure of her business premises and the destruct tion and removal of
all the contents of the said business premises whichinclude allof her household and personal property, all the stocks, the equipments,the machinery, fixtures and fittings and many, many many more by the said defendants and especially since there was no warrant issued for that seizure. By reason of the foregoing the plaintiff-appellant Ally

have also been further harmed and damaged in that she have sustained extreme emotional up, and distress, in seeing her personal and household belonging and contents/possession of the business premises being willfully, intentionally, illegally, maliciously and tortiously destroyed and removed, financial business loss, loss of income, and as otherwise be substantially and irrevocably harmed and damaged by reason of the loss of very important documents and of future income from the subject business premises. By reason of the foregoing the plaintiff-appellant Ally have sustained damages in the sum of $10,000,000 (Ten Million Dollars) and thereby demands treble damages totalling the sum of $30,000,000 (Thirty Million Dollars) by reason of the willful, illegal, collusion, intentional, conversion, negligence, burglary, deliberate, forcibly entry, trespass, destruction, fraudulent, malicious and tortious acts, unreasonable searches and seizures,violation of plaintiff- appellant Ally's 14th Amendment Constitutional Rights,Violation of the Bill of Rights, Violation of the 4th Amendment and Violation of the 5th Amendment the Taking Clause, etc., and further demands Punitive damages and fees to be assessed by this Court, together with costs and disbursement of this proceeding and interest thereon and for such other and further relief as this Court deems just and proper.

Dated: April 29, 2005

Yours etc.,
Ackleema Ally
pro-se plaintiff-appellant

Facts and Exhibits in Support of Petition for Rehearing

I, Ackleema Ally the pro-se plaintiff, doing business as Ahmad Meat Market herein, sets forth and alleges in the facts and exhi bits as evidence in support of the Petition for Rehearing and as such I am familiar with the facts and circumstances herein, and sworn under the penalty of perjury. On October 24, 2003 a verified complaint was filed in the United States District Court under Docket #03-CV-5380 (R#61)and a Civil Judgment was entered of

Honorable Judge Nina Gershon, of the United States Eastern District Court,(R#404) which dismissed the plaintiff Ally's verified complaint for lack of subject matter jurisdiction, and on Decem ber 22, 2003 a Notice of Appeal was then filed in this Court under Docket #04-0665-cv.

On April 19, 2005, an Amended Summary order was entered in this Court, which affirmed the Judgment of Judge Nina Gershon. (Exh. A). On May 5,2005 the plaintiff then filed a petition for rehearing. Ann.Exh. B. A letter dated May 11,2005was received by the plaintiff Ally from M/s Anna Steglich, Deputy Clerk of the U.S. Court of Appeals informing her that she needs leave of the Court to file her exhibits. (Exh. C). A motion was then filed by the plaintiff Ally, for leave of this Court to file the facts and exhibits as evidence in support of her petition for rehearing since the Federal Rules of Appellate Procedure or Second Circuit Rule which said that a petition for rehearing must have only 15 pages, she was unable to file the facts and exhibits which would help this Court to make a just decision, and the said motion was granted. (Exh. D) The plaintiff Ally was represented by an attorney in the Action 5610/91, so on account of that she did not know that the said action was not a land lord and tenant action, and because of her pro-se status she treated that action as a landlord and tenant action, and she did not realized that she was treating all the actions as landlord and tenant, and also contract and tort action

However, Pursuant to FRCP28 U.S.C.A.Rule 64: Federal Court is bound by State Law when a state created seizure remedy is used.U. S. v Sinclair, D.C.Del.1972,347 F.Supp.1129. Pursuant to FRCP 28 U.S.C.A.Rule 64: When proceeding for seizure of property for securing satisfaction of judgment ultimately to be entered has been removed from state court to federal court, manner of obtaining such remedy is governed by law of state court, subject to rules of federal court. Prozel and Steigman Inc.,v International Fruit Distributors,D. C.N.J.1959, 171 F.Supp. 196. Also,Pursuant to FRCP 28 U.S.C.A. Rule 64: In all cases in federal Court, whether or not removed from state court,state law is incorporated to determine availability of prejudgment remedies for the seizure of person or property to secure satisfaction of Judgment ultimately entered. Granny Goose Foods,

Inc.,v Brotherhood of Teamsters and Auto Truck Drivers Local No.70 of Alameda County, Cal 1974, 94 S.Ct. 1113,415 U.S. 423, 39L.Ed 2d 435. The first action was a Landlord and Tenant action against Nazmoon Hassan the original Landlord, but after plaintiff Ally received the amended summary order from this Court, she went to the Queens County Supreme Court Records Office to see the nature of each of the actions, as filed.

1st Landlord And Tenant Action In L & T Court

On or around April10, 1986, plaintiff Ally saw Mr Kamaral Hassan outside his building at 127-01 Liberty Avenue, Queens, New York 11419. The plaintiff told him that since he closed his meat business, if he would like to rent the store toher, but he said that he already had an offer from a Mr Rahaman, but then he asked from what date does she want the store, so the plaintiff said if possible from the 15th of April.Mr Hassan then said,OK get your money for April 15, 1986 and call him, if Mr Rahaman do not bring his mon ey, he will rent the store to her, he also asked how many years lease would she want, and the plaintiff told him that she will leave it to him to decide because she has three children to take care of, so the longer the better, but at least the minimum three years and the maximum is up to him, he then said, "ok this is what I will do for you, if I do not hear from Mr Rahaman, I will rent the store to you, and since I did not know the men in the store next door and I gave them 8 years lease, then I will give you a good lease because you are like a big sister to me,"(since there is a family friend rela tionship the plaintiff had with Mr Hassan's relatives) the plaintiff then thanked him and left. On April 15, 1986 the plaintiff called Mr Hassan and he told her to go over with her money because he did not hear from Mr Rahaman, so the plaintiff Ally went over. Mrs Hassan wrote the receipts and gave them to the plaintiff (securety and rent receipts) then Mr Hassan said that he cannot give the keys to her at the same time because he had to collect them from Mr Rahaman, the plaintiff then told him that he could bring the keys and the lease to her when he get them. Before the plaintiff left she also asked Mr.Hassan if he could also rent to her the machinery and equipment until she gets her own, but Mrs Hassan then said why don't she buy them, the plaintiff Ally then told her

On April 17, 1986, Mr Hassan brought the keys of the store premis es to the plaintiff, then she asked for the lease and he said that he will bring it tomorrow (April18,1986). The original owners Naz moon Hassan and Kamaral Hassan authorized and empowered Kamaral Hassan co-owner to enter into and did sign said agreement and/or contract of lease on April 18, 1986 on behalf of said owners of premises 127-01 Liberty Avenue also known as 103-25 127 Street, Richmond Hill, County of Queens, New York, 11419, Kama ral Hassan as landlord and Ackleema Ally as tenant to use and occupy said premises as a commercial business and to do business as Ahmad Meat Market. (R#122). On or about 10.am on April 18, 1986 Mr Hassan brought the lease and told the plaintiff Ally to sign it, before the plaintiff sign the lease she read it, and she saw that the lease was for 11years but the date was from April 15, 1986 to April 15, 1986, so she asked him if the lease is for a day, and he said that his wife made a mistake but he will get it fixed, she also asked him if she should go with him to get the lease notarized and he said, "no" because the notary people are his friends, and because the plaintiff Ally knew Mr Hassan,she trusted him and told him ok get the lease corrected and notarized and bring it back, he then left. About an hour later Mr Hassan returned with the lease, the date April 15, 1986 to April 15, 1986 was changed to April 15, 1986 to April 15, 1997, 97 was written over the second 86, the plaintiff Asked him if it will be ok and he said "yes, do not worry, if you have a problem just call me" Mr Hassan then asked the plaintiff Ally if she could make a copy of the lease for him and keep it he will pick it up another time, because he do not have the time to get a copy for himself, so plaintiff Ally then got a copy for him and whenever she sees him she reminded him of his copy, but he never collected it . The said contract of
lease, provided for a tenancy of 11 years with an annual rent of $4,800 ($400.monthly)and that said lease shall become effective as of April 15, 1986. The plaintiff Ally entered upon the premises in April of 1986 and thereafter constructed and developed said premis es to be used as a Halal Meat Market and ancillary products store.

Amendment V said:Leasehold interests are property interests protected by this Amendment. Devines v Maier, C.A.7(Wis.) 1981,665 F.2d.138. On or around April 20, Mrs Hassan brought a list of all

the items that she would like the plaintiff tobuy,which cost approxi mately $4,029.00, so the plaintiff Ally told her that as long as they are in good working order she will buy them, so she left, but when the plaintiff tried the machinery and equipment they were not work -ing properly,she spent approximately$500,to repair them but they still did not work properly,and when she asked Mrs Hassan to take them back she got annoyed and refused, the plaintiff then went to see an attorney and he told her to return them to Mrs Hassan, but Mrs Hassan just abused her and walked off. A few days later the plaintiff saw Mr Hassan and she told him what happened and she showed him the list of the equipment and machinery with the costs - and she also told him how much she paid to repair them but they still did not work. When Mr Hassan ooked at the list and he said that he is very sorry,because his wife tried to cheat her,for she over -charged her for the things. Mr Hassan then took everything back, he put the large things inthe basement of the building and the small ler things to his house,the only thing that was left for him to collect was the band saw, because it was too big and heavy for him to re- move at the said time. On or around March 1987 Kamaral Hassan died and Mrs Hassan and afew men removed the saw in avery rude manner.

From April1986 to June 1987the plaintiff had no financial problem with rent, butfrom July, she had some financial difficulty, however on September 1987 the plaintiff received a72 hour notice from Mrs Hassan, but they went to Court and it was settled,but on November 23, 1987 the plaintiff Ally again received a 72 hour notice,however an agreement was made for the plaintiff to pay the amount due by December 31,1987,Mrs. Hassan then received some of the rent be- fore December 1987and the rest in January 1988, the rent was then paid in full. On November 5th, 1987 Chandra Kishore and Prabha Palmour (defendants) under the name of Ralph Sukhoo and Rosa- line Sukhoo went into contract of sale ofthe said building with Naz moon Hassan the original landlord/owner which stated,"Rear store and front apartment shall be delivered vacant and broom clean on title."And the plaintiff Ally did not know that the original landlord Hassan was selling the property. (R#124). On January 29, 1988 alterations were made on the said contract, the names Ralph Suk- hoo and Rosaline Sukhoo (defendants) were scratched off and Chandra Kishore and Prabha Palmour (defendants) were written

over them, still with the same clause as above,"Rear store and front apartment shall be delivered vacant and broom clean on title." The plaintiff still did not know that the landlord Hassan was selling the property.

On March 10, 1988 the plaintiff went to drop her children off to school and do some errands, when she went to the store her keys could not open the locks, they were changed, so she went to the front store and asked if anyone was tampering with her locks, because her keys cannot open them, then, the owner in the front store said, where were you we had a lot of fun in your store, the plaintiff said why, what happened,he said that Mrs Hassan and the Marshall broke the locks and they called the police and told them that you had a bomb in the store, and then the police came and evacuate the whole neighborhood and put your little clock in a big bomb truck and took it away, so the plaintiff thought that the shop owner was joking, so she asked him what nonsense he is saying, then he said, "Oh no, I am not talking nonsense there was a lot of fun around here, you go and ask the police for your clock, they took it in this big bomb truck," so the plaintiff asked, "What clock you are talking about," he said, "the one you had on the shelf since you moved into the store," so then the plaintiff asked if they did not tell the police that the clock was not a bomb only a clock,he said that they tried to tell the police but no one will listen to them, and Mrs Hassan knew that it was a clock, she saw it in the store since the plaintiff moved into the store. However, when the plaintiff went to the police precinct and told the officers that her clock is not a bomb, and can she have it back,she could not get it back,because they had already destroyed it. That clock was a gift from one of the plaintiff's previous employer when she was leaving that employment. The plaintiff also asked the police why her locks on the store premises were changed then the police told her that she was evicted, the plaintiff then asked if a police officer can accompany her to her landlord to find out why she was evicted because no eviction notice was served on her. Two officers and the plaintiff then went to Nazmoon Hassan's home, the original landlord, and she said that she evicted the plaintiff Ally for rent, then the plaintiff told her that she owed her no rent, but Mrs. Hassan started to argue with her, so the plaintiff just summoned her to the Landlord and Tenant Court in Queens County

and when she went to Court she told the plaintiff that she can do her nothing, because the building is no longer hers, because she sold it to Chandra Kishore and Prabha Palmour. The plaintiff Ally did say in her petition for rehearing that the second part of this action started from when the defendants Kishore and Palmour broke the lock and enter the store premises on October 31, 1994, but it was started from when the defendants Kishore and Palmour bought the building.

Action Index No.5610/91:Contract and Ejectment

On March 16,1988 Chandra Kishore, Prabha Palmour(defendants) a/k/a Ralph Sukhoo and Rosaline Sukhoo, and the original land lord Nazmoon Hassan went into the closing of the sale of the said building and the plaintiff Ally's store was not vacant and broom clean as stated in the contract of sale, the plaintiff Ally was still the legal tenant under the tenancy of her lease, all her possession, stocks, machinery and equipments, personal property and all the contents of the said business were still on the premises when the defendants Kishore and Palmour inspect the business premises be fore the closing of the sale. (R#126). Constitution Art1#7 said: "Village which purchased fee of premises in which plaintiffs were month-to-month tenants did not engage in a defacto taking,but pur chase was subject to same duties previous owner had to plaintiffs, and thus tenants retained, with respect to their fixtures, the same rights which they had as tenants, including the right to remove the fixtures at the termination of their tenancies. Fasciani v Village of Ossining (2nd Dept. 1977) 58.A.D. 2d 497, 396 N.Y.S. 2d 669." The defendants Chandra Kishore and Prabha Palmour were custo-mers of the plaintiff Ally and they knew that Ally was the legal tenant at the rear store of the subject business remises and the de fendants also knew that Ally has use and occupancy of the said store when they signed the contract of sale. (R#127). On June 30, 1988 plaintiff Ally was granted temporary possession of the said business premises, an order was made by Honorable Judge Rut-ledge of the Queens Landlord and Tenant Court entitling the tenant (plaintiff Ally) to break the locks and enter the premises with the help of the police, because the new owners of the building and the

City Marshall had refused to put her back in possession of her business premises,and Honorable Judge Rutledge told the landlords that if they would not accept the lease and do not want Ally as a tenant, they will have to start a new proceeding to get her out, since they went into closing when she was the legal tenant, and if they accept her rent then they will start a landlord and tenant relationship. (R# 128 and R#133).

During the month of October 1988 plaintiff Ally bought approxi mately $8,405 in stock for the store and in November water started to pourdown from the above apartment and damaged all the stock that was in the store premises, since that apartment was not occu pied by any tenant she informed the said new owners about the dam ages and they said they do not care. (R#130). In summary proceeding for rent, tenant was entitled to set up counterclaim for damages from leakage from pipes under landlord's control, based on breach of covenant to make repairs Coleman Holding Corp.,v Altman,1934 Ally was permanently restored to possession and the new land lords were told by Honorable Judge Rutledge that if they want the plaintiff Ally out, they will have to start a new proceeding, since they went into closing when the plaintiff Ally was still the legal ten ant, if they did not want her as a tenant, they should not go into the closing of the sale of the property until she remove from the premis -es, he also told the new landlords that if they accept her rent, then they will start a landlord and tenant relationship.(R#133).Commenc ing from the date that the defendants took possession of the said building, they have failed, neglected and refused to repair the sub ject premises so that plaintiff Ally can continue in her business as a re-
tail meat, grocery and ancillary products store. Attached are photo graphs of the outside of Ally's store, which was taken during the first week of January 1989 before the scaffold was put up by the de fendants. (R#136).

The defendantshave caused to remain open a notoriousand danger -ous and defective,unsafe and unhealthy condition of an opening of the roof over plaintiff Ally's store. (R#137-138). Pursuant to#47.5 (b) RPAPL provides: Upon the proper proof of the existence of a condition that is in the opinion of the Court, such as to constructive

ly evict the tenant from a portion of the premises occupied, or is, likely to become dangerous of life, health, or safety, the Court before which the case is pending may stay proceedings to dispossess the tenant for non-payment of rent, or any action for rent or rental value. Such premises of the tenant have become unusable as a store for which it was intended, and said use and occupancy has been disturbed and discontinued by the willful failure to repair and restore the subject premises, although many requests were made of plaintiff Ally's attorneys (Pearlman, Apat and Futterman). The defendants continually keep destroying the business premises and the contents of the said business premises, whenever the plaintiff put new stocks in the store, the defendants just pour water down and destroyed them, and they never notify the plaintiff that they were repairing the building. The Constitution said: With respect of eviction proceeding tenant was entitled to protection of federally secured procedural due process an essential part of which was either actual notice there of or constructive notice reasonable cal culated under all circumstances to apprise interested parties of pendency of action and afford them an opportunity to present their objections. Carrasco v Klein,D.C.N.Y. 1974, 381 F. Supp. 782.

On May 1,1989,plaintiff Ally received an estimate for the sum of $8,085, which is some of the cost to repair some of the damages done by the said defendants. (R#139-140). In 1989 the store next to plaintiff Ally's store had a fire and all the electrical wires in the building were damaged andthe landlords deliberately refused to fix the wires in Ally's store.R#141. On September 18, 1989 a petition for non-payment of rent was filed inthe Landlord and Tenant Court for rent, from April 1,1988 to September 1989. The said new owners of the building claimed that plaintiff Ally defaulted in the payments of rent, but it was the new owners who refused to accept her rent. (R#142). On January 31, 1990 plaintiff Ally appeared at the Landlord and Tenant Court for the trial of non-payment of rent, which was taken off the calendar by the defendant's attorney, because the defendants promised to do the repairs and plaintiff Ally promised that as long as the repairs are done, she will pay the rent and continue with her business, but the repairs were still not done. (Exh.W.) A tenant is not bound to make permanent and important

repairs which the landlord has agreed to make but may seek his remedy by action to recover the damages,orby counterclaim Thonson -Houston Electric Co., of New York v Durant Land Improvement Co., 1894, 4 Misc. 207, 144 N.Y.S. 34.

Where there are rent impairing violations of record and landlords does not repair them,landlords are not entitled to the rent deposited in Court and they should be returned to the depositing tenants. Lee jon Realty Co., v Davis (1977) 99 Misc. 2d 68. Where after two years since the tenant had deposited the rent with the Court it was clear that the landlord would not make the repairs, tenant was entitled to the return of the rents. Ellabee Realty Corp.,v Beach72 Misc. 2d 658. Pursuant to #47.5(b)RPAPL provides:Upon proper proof of the existence of a condition that is in the opinion of the Court, such as to constructively evict the tenant from a portion of the premises occupied by him, or is, likely to become dangerous of life, health or safety, the Court before which the case is pending may stay proceedings to dispossess the tenant for non-payment of rent, or any action for rent or rental value. On February 5, & 12, 1990 plaintiff Ally's attorney wrote to the new owners(defendants) attorney, requesting that they do the repairs, but the repairs were not done. (R#144 &145). On June 16,1990 the defendants Kishore and Palmour started a meat business exactly like Ally's business after they finished repairing the burnt out store next door.(R#146). After the new owners Kishore and Palmour (who are now defendants) realized that they could not get plaintiff Ally's business to do their own meat and grocery business, they claimed that Ally's lease was forged, and commenced a Contract and Ejection action in199(Index No 5610/91) in the Supreme Court, County of Queens, against the original ownerof the building Nazmoon Hassan and the tenant Ally (now plaintiff) of the said business premises in the Supreme Court, County of Queens. The plaintiff Ally had an attorney so she did not know that it was a tort and contract action, she thought it was a landlord and tenant action, but at this time there was no landlord and tenant relationship between the new owners and the plaintiff Ally, since they refused to accept her rent.

Plaintiff Ally then made a counterclaim against the said defendants because since the closing of the sale of the property, they did not allow the plaintiff Ally to continue with her business in peace,they wrongfully and constructively evicted her fromthe business premis es when theyopened the roof of the building and destroyed her business premises and all the contents within. Let the evidence show the fact. (R#158-R164). On July 2, 1991 a deposition was taken of Mrs Hassan before the trial (R#341-382). On page #13: 2-7: Mr Futterman marked the contract of sale dated January 29, 1988 as Exh. A, on page #14:2-5: Mr Futterman said to Mrs Has san, "I now show you a document entitled Bargain and Sale, I ask you if you recognized that document?" Mrs Hassan said, "This is a deed of the property at 127-01 Liberty Ave, which I own." On page 14:22-25: Mr Futterman then said." That document will be marked as Exh. B. On page#16:5-9: Mr Futterman asked, "When you signed that contract of sale —after your attorney explained it to you- did you believe the information contained in the document was true?" Mrs Hassan said: "Yes, I did." On page #17:3-5: Mr Futterman asked Mrs Hassan: "Now were there one or two stores on the ground floor of that building? "Mrs Hassan said: "Two stores."On page #17:13-14: Mrs Hassan said,"There are two stores in this building: a front and a rear store." On page #18:4-13 : Mr Futterman asked: "At anytime, was a Miss Ally a tenant of either one of those stores?" Mrs Hassan said: "Yes." Mr Futterman then asked: "The store that Miss Ally was a tenant of, can you tell us at what premises or at what address it was?" Mrs Hassan said. "At 127-01 Liberty Ave., Rear Store." Mr Futterman then asked, "Now is 127-01 Liberty Avenue's rear store listed on the lease?" Mrs Hassan said" No." On page#19:5-25: Mr Futterman said, "Is It not a fact, that the premises rented to Miss Ally is not listed in Paragraph 20 of Exhibit A(contract of sale)?" Mrs Hassan said, "That's correct." Mr Futterman then said, "So, at the time that the contract of sale was prepared,you did not list the premises leased to Miss Ally. Is that correct?" Mrs Hassan said, "No, I didn't. As far as I know--" Mr Futterman then asked, "Were you aware that there was a lease with Miss Ally?" Mrs Hassan said, "As far as I am concerned, there is no lease with Miss Ally. Just a one-year ease." Mr Futterman then asked, "Do you have a lease which was

signed by Miss Ally and someone else, which would indicate that it was a one-year lease?" On page #20:2-25: Mrs Hassan asked, "Would you repeat that?"Mr Futterman then asked, "Do you have a lease between yourself or your husband and Miss Ally?" Mrs. Hassan replied, "Yes, I have a copy." Mr Futterman then said, "May I see a copy of that lease that you have." Mrs Hassan then said, "Here."Mr Futterman then said, "With regard of the document just given to me by the witness as being a copy of a lease between Hassan and Ally: I am going to request that this document be mark ed as Defendant's have it stamped in the lower left, on the rear of the document." On (now plaintiff Ally)Exhibit C for identification, this date. The document is dated April—the date of the signatures is undocumented--but the agreement, as set forth between the land lord and tenant, is April 12th, as indicated on the top portion of the document. We will page #21:18-25, Mr Futterman asked, "Mrs Hassan, did you ever see the original of Exhibit C?" Mrs Hassan replied, "Yes, I prepared it myself." Mr Futterman then asked, "Now, with regard to that document—meaning the original of the document, and not defendant's Exhibit C itself—did you sign it?" Mrs Hassan then said, "No, I didn't."On page #22:2-25, and page# 23:2-25, Mr Futterman asked, "Did someone else sign it?" Mrs Hassan answered, "My husband did." Mr Futterman then asked, "Can you tell us where the original of the document is?" Mrs Has san said, "The original of this lease?" Mr Futterman said,"Yes, the lease that we've offered as defendant's Exhibit C." Mrs Hassan said, "I gave it to Ackleema Ally." Mr Futterman asked, "After you gave it to Ackleema Ally, did she ever give it back to you?" Mrs Hassan asked, "The original?" Mr Futterman said, "Yes. The original. After you gave her the original, did she ever give it back to you?" Mrs Hassan said, "No." Mr Futterman then asked, "When you gave this document to Ackleema Ally, was your husband's signature on the document?" Mrs Hassan replied, "Yes." Mr Futter man asked, "When you gave it to her the first time, was your hus band's signature on the document?" Mrs Hassan asked, "What document —the first time?" Mr 7Futterman then asked, "Did you give it to her only once, or more than once?" Mrs Hassan replied, "Once." Mr Futterman then asked, "When did you give the original of this document to her?" Mrs Hassan answered, "Right

after my husband signed it, in front of the notary public. And we handed it to her. We made two copies—I made two copies—we gave her the original." Mr Futterman asked, "Did she sign it after you gave her the original?" Mrs Hassan replied, "No." Mr Futterman then asked, "When did she sign that document, if at all?"

On page#24:2-25, Mrs Hassan replied, "She signed it in front of a notary public." Mr Futterman then asked, "It is your testimony, that Miss Ally signed this document in the presence of a notary public. Is that correct?" Mrs Hassan replied, "Yes." Mr Futterman then asked, "Is it your testimony, that your husband signed this document in the presence of a notary public?" Mrs Hassan replied, "Yes." Mr Futterman asked, "Where was the notary public located?" Mrs Hassan replied, "On Liberty Avenue. I cannot remember the address." Mr Futterman asked, "Who was present, at that time, when the document was signed before the notary public? Were you there?" Mrs Hassan replied, "I cannot remember if I was there." Mr Futterman asked, "May I inquire as to why you did not sign that document, the lease, defendant's exhibit C?" Mrs Hassan asked, "Why I didn't sign it?" On page #25:4-25: Mr Futterman then asked Mrs Hassan, "Does your signature appear any where on that document, Exh. C?" Mrs Hassan answered, "No." Mr Futterman then asked, "Whose signature, as far as the land lord is concerned, appears on that document?" Mrs Hassan replied, "My husband." Mr Futterman then asked, now, you say you prepared that document. Is that correct?" Mrs Hassan replied, "Yes." Mr Futterman asked, "When you prepared the document, was the language the same as it is on that copy?" Mrs Hassan replied, "Yes." Mr Futterman asked, "No difference whatsoever, is that correct?" Mrs Hassan replied, "No difference. No." Mr Futterman then said, "I am going to make a photocopy of this document now." On page #26:2-25, #27:2-25, and #28:2-25, #29:2-25: Mr Futterman then said to Mrs Hassan, "I've given you a red pen. Please outline everything that you wrote in your own hand on the original, which is shown on this copy marked as defendant's Exhibit C." Mrs Hassan said, "All right." Mr Futterman then said,"The record will indicate, that Mrs Hassan, with a red pen, is marking a copy of Exhibit

C, and is circling those areas which she wrote in her own hand. Is there anything on the back that you wrote in your own hand, ma' am?" Mrs Hassan replied, "No."Mr Futterman said, "Now, accord ing to the circled writing on this document, you wrote "April 12, 1986" at the top. Is that correct?" Mrs Hassan replied, "Yes." Mr Futterman then said, "According to this document, you wrote the address "127-01 Liberty Avenue, Richmond Hill, New York," and zip code. Is that correct?" Mrs Hassan answered, "Yes." Mr Futter man then asked, "And you also wrote the terms "One year's rent, $4800, beginning April 15, 1986, at a monthly rental of $400, ending on April 15, 1986, with security of $400."

Did you write that?" Mrs Hassan answered, "Yes." Mr Futterman asked, "Did you circle that , also?" Mrs Hassan answered, "Yes." Mr Futterman then asked,"Now,when you prepared this document, defendant's(now plaintiff Ally)exhibit C,what did you do with it?" Mrs Hassan replied, "I gave it to my husband." Mr Futterman then asked, "And your husband went some place with the document, didn't he?" Mrs Hassan then replied, "Yes." Mr Futterman asked, "At the time you prepared that document, and before you gave it to your husband, Miss Ally had not signed the document, had she. Is that correct?" Mrs Hassan said "No, She had not." Mr Futterman then asked, "When you gave that document to your husband, could you tell us for what purpose you gave it to him." Mrs Hassan re-plied,"To have it notarized."Mr Futterman then asked, did you give it to your husband also for the purpose of having the tenant sign her name?" Mrs Hassan replied,"Yes."Mr Futterman then asked,"Now, when you said before, that Miss Ally and your husband went before a notary public when the document was signed, do you know that of your own knowledge, or did someone tell you that?" Mrs Hassan replied, "My husband told me." Mr Futterman asked, "I show you defendant's (Ally) exhibit C, where you circled in red pen the hand written portions. Does it appear anywhere on that document, that anyone's signature other than your husband's signature is being no tarized?" Mrs Hassan replied, "Yes, Ackleema--."

On page #30:2-25;#31:2-25;#32:2-25:Mr Futterman asked, "Now, did there come a time, that your husband brought that document

back to you? Meaning defendant's (Ally) exhibit C." Mrs Hassan replied, "Yes. He brought it home that night and gave it to me."Mr Futterman then asked, "What day was that? If you know." Mrs Hassan said, "the following day." Mr Futterman asked, "Was that document prepared by you on April 12,1986?"Mrs Hassan answer ed, "Yes." Mr Futterman then asked, "It is your testimony, that on April 13, 1986, you received the document back from your husband. Is that correct?" Mrs Hassan replied, "Yes." Mr Futterman then said,"Now, in looking over the document, defendant's exhibit C, the original of which you claim you prepared: It appears from the writing, that the lease begins on April 15, 1986, and ends on April 15, 1986. Is that correct?" Mrs Hassan answered, "Yes, it does."Mr Futterman then asked, "Was this lease to be for one day? Just "Yes" or "No" Mrs Hassan said, "No." Mr Futterman asked. "The document which has been marked as defendant's(now plain tiffAlly) exhibit C for identification: Has that document ever been altered, in any way what so ever; by omission, or obliteration, or addition, for example? Just "Yes" or "No." Mrs Hassan then said, "Rephrase that, please." Mr Futterman then asked, "Has the docu ment ever been altered." Mr Plever (Mrs Hassan's attorney) said,

"Changed,"Mr Futterman then said,"Yes. Changed: Whited-out.Or anything like that." Mrs Hassan answered, "Yes. It has." Mr Futter man asked, "Could you please tell me what portion of that docu ment has been whited-out or altered." Mrs Hassan then said, "No, No, Not mine." Mr Futterman then said, "That's all I'm asking about. Just this document." Mrs Hassan then replied,"Okay, No." Mr Futter man then said, "I would like to have the copy of defen dant's (Ally) exhibit C marked as Defendant's Exhibit D."Mr Kass (Kishore and Palmour's attorney) asked, "You're talking about the copy--." Mr Plever (Hassan's attorney) asked, "The copy with the circles in red?" Mr Futterman answered, "Yes. As defendant's ex hibit D. (Where upon, the afore mentioned document was marked defendant Ally exhibit D for identification, this date. Mr Futterman then asked, "Mrs Hassan, did you ever show the lease to the purchasers of the property, Mr Kishore and Mr Palmour." Mrs Hassan replied, "No, I didn't."

On page #33:2-25;# 34:2-25; #35:2-25:Mr Futterman asked, "Did you show any leases to Mr. Palmour or Mr Kishore?" "Yes," or "No." Mrs Hassan answered, "No."Mr Futterman then asked, "Did there come a time, that the portion of the lease where the date is shown, in defendant's (Ally) exhibit C, was changed from April 15, 1986 to some other date?" Mrs Hassan answered, "No." Mr Futterman then asked, "When you gave that document to your husband---defendant's exhibit C for identification-and before the tenant signed the document:Did you,at any time, ever prepare a second document known as a lease, for Miss Ally?" Mrs Hassan said "No." Mr Futter man asked, "To your knowledge, did your husband ever give you another document which was signed by him and Miss Ally, or a copy of a document?" Mrs Hassan answered, "No." Mr Futterman then asked, "The information contained in Exhibit C—in the box having to do with the term of the lease,the rent and security--Is that outlined in a box in defendant's Exhibit C?" Mr Plever (Hassan's attorney) said,"What happened to the circles?" Mr. Futterman said, "That's Exhibit D.). There's a box which has the term of the lease, the rental, the beginning and ending date. The security and monthly rental --" Mr Plever asked, "You're referring to this box - (indicating)" Mr Futterman asked, "Yes. Is it so?" Mrs Hassan said, "Yes. It is so." Mr Futterman asked, "The lease—the original lease —was that ever given to anybody?" Mrs Hassan answered "No."Mr Futter man asked, "Can you tell us how long you owned this building prior to April 12,1986." Mrs Hassan said, "I told you I purchased it in 1984" Mr Futterman asked, "Had you prepared the leases for all the tenants in that building?"Mrs Hassan answered, "Yes.I did."Mr Futterman asked, "On how many prior occasions had you prepar ed the leases?" Mrs Hassan said, "I can't remember."

On page 37:2-25,#38:2-25:Mr Futterman asked, "Now going on to defendant's (now plaintiff Ally) exhibit D, where the hand written portions were outlined in red by you,which is a copy of a lease.The name "Kamaral Hassan" appears therein as landlord. Is that cor rect?" Mrs Hassan said,"Yes."Mr Futterman asked, "Do you know whose writing that appears to be a copy of?" Mrs Hassan said, "No,

I don't." Mr Futterman asked,"Could it be that that writing is your husband's writing, or printing, there?" Mrs Hassan said, "No, I know my husband's handwriting." Mr Futterman asked, "Do you have any specimens of your husband's printing or handwriting?" Mrs Hassan said, "Yes." Mr Futterman asked, "Do you have that with you?" Mrs Hassan said, "No." Mr Futterman asked, "When you gave this document to your husband, the name of the landlord was left out, wasn't it?" Mrs Hassan said, "Yes." Mr Futterman asked, " Also, the name of the tenant was left out, wasn't it?" Mrs Hassan replied, "Yes." Mr Futterman then asked, "And at the time you gave this document to your husband, the notary public was left out, wasn't it?" Mrs Hassan said, "Yes." Mr Futterman also said, "And the signature at the bottom of the page "K. Z. Has san," as well. Is that correct?" Mrs Hassan said, "Yes." Mr Futter man then asked, "And the language on the back,"Sworn to this18th day of April, 1986" and the signature "Kamaral Z. Hassan," that was also not on this document when you gave it to your husband, Is that right?" Mrs Hassan said, "That's right." Mr Futterman then asked, "Could you tell us why you gave that document to your hus band, instead of your having the document executed." Mrs Hassan answered "I had to work." Mr Futterman then said, "Would it be fair to say, that at the time this document was executed by your husband and Miss Ally, you were not present?" Mrs Hassan answered, "That is correct." Mr Futterman asked, "Where were you working at the time?" Mrs Hassan said, "I can't remember." Pg.39:2-9.

On page #42:15-25, #43:2-25: Mr Futterman asked Mrs Hassan, "Now, when your husband brought back the original of that document to you—meaning the lease—what id you do with it?" Mrs Hassan answered, "I put it away." Mr Hassan asked, "Where did you put it?" Mrs Hassan answered, "Where I have all my papers." Mr Futterman continued to ask, "Tell us where that is, ma'am. Where that was, at that time."Mrs Hassan said,"In my house, locked away." Mr Futterman asked, "Was it in a file cabinet, or in a safe or in a desk, or someplace else?" Mrs Hassan said, "In a safe." Mr Futterman asked, "When you say "a safe," are you talk

ing about something that is locked up and has a door on it?" Mrs Hassan said, "It's a lock, but not a padlock; if you're saying that." Mr Futterman said, "Did it have a combination lock?" Mr Hassan said, "No." Mr Futterman asked, "Did it have a regular lock, with a key?" Mrs Hassan said, "No." Mr Futterman asked, "What kind of lock did it have?" Mrs Hassan said, "There's no padlock to it. You could open it at any time." Mr Futterman asked, "This was in your house?" Mrs Hassan answered, "Yes." Mr Futterman asked," Did you have access to that document while it was there?" Mrs Hassan said, "Yes." Mr Futterman asked, "Did your husband have access to that document before he died?" Mrs Hassan said, "Yes." Mr Futterman asked, "Did you have any children or anyone else residing with you?" Mrs Hassan said, "Yes."

On page#44:2-25;#45:2-25;#46:2-25,#47:2-25, Mr Futterman ask ed, "Who did you have residing with you in 1986 and 1987?" Mrs Hassan replied, "My kids." Mr Futterman asked, "How old were they at that time?" Mrs Hassan said, "I have three kids. They were 15,14 and 13." Mr Futterman asked, "Did they ever go to the place where those documents were kept?" Mrs Hassan said, "No." Mr Futterman asked,"Now,did there come a time,that you took the original of the lease out of the place where you maintained it, in this cabinet, or safe, or what-ever it was?" Mrs Hassan replied, "No." Mr Futterman then asked, "So when you had the original of this document in your possession, it never left your possession. Is that correct?" Mrs Hassan said, "Yes," Mr Futterman then said, "I call for the production of the original ofthe document marked as defend ant's (Ally) exhibit C." Mr Plever(Hassan's attorney)said, "I don't have it, do you have it?" Mrs Hassan said, "No, I don't" Mr Futterman asked Mrs Hassan "Did you ever find that that document was missing from among your records, in that safe? I am referring to the original of defendant's (Ally) exhibit C." Mrs Hassan asked, "Will you rephrase it. I don't understand what you're saying." Mr Futterman said, "The original lease, which you had in your safe, was deposited there by you, was it not?" Mrs Hassan answered, "Yes."Mr Futterman said, "Now, you said no one else had access to this document except you and your husband. Is that correct?" Mrs Hassan said, "Yes." Mr Futterman then asked, "To your knowledge,

the original of that document, defendant's (Ally) exhibit C. was always maintained in the safe in your house. Is that correct? Mrs Hassan said, "Yes." Mr Futterman then asked, "Now, ould you please tell us where that document is today. If you know." Mrs Hassan answered, "Okay. Prior to this contract of sale, I had someone purchase this property. And that's where the lease was. I thought that the deal would go through, you know. But the deal fell through. And it was with the real estate office." Mr Futter man asked, "This deal which didn't go through, was that contract of sale for the sale of the premises?" Mrs Hassan answered,"Yes." Mr Futterman asked, "Can you tell us when that contract was enter ed into." Mrs Hassan answered, "When. I don't remember." Mr Futterman asked, "Was it before your husband died or after he died, that you were contracting to sell the property?"Mrs Hassan re plied, "No, it was right after my husband died." Mr Futterman ask ed,"Now, at the time, you say the original of the lease was given to someone. Is that correct?" Mrs Hassan answered,"Yes." Mr Futter man asked "Meaning the original that you held in your safe at your house. Is that correct?"Mrs Hassan answered,"Yes."Mr Futterman asked, "Who did you give it to?" Mrs Hassan answered, "I gave it to the person at the real estate office." Mr Futterman asked,"What is the name of the real estate office?"

Mrs Hassan said, "At the time, it was Buckingham Realty." Mr Futterman asked, "Where are they located?" Mrs Hassan replied, "They were located at—I can't remember now -but they're on Hill side Avenue."Mr Futterman asked, "In Jamaica?"Mrs Hassan said, "Yes."Mr Futterman asked, "Would this have been in 1986?" Mrs Hassan answered, "Yes." Then Mr Plever said, "Off the record." (Discussion off the record).

On page #48:2-25; #49:2-25;#50:12-20,#51:2-4: Mrs Hassan then said, "No. Not in 1986. It was in 1987. I'm sorry." Mr Futterman asked, "Do you know if Buckingham Realty is still in existence in Jamaica?" Mrs Hassan answered, "No. They're not."Mr Futterman asked, "Do you know where they're located now?" Mrs Hassan said,"No, I don't." Mr Futterman then asked,"After you gave them the original of the lease, did you retain an attorney?" Mrs Hassan

said, "Yes, I did." Mr Futterman asked, "That was for the selling of the building. Preparing a contract. Is that correct?" Mrs Hassan said "Yes." Mr Futterman asked, "What was that attorney's name?"
Mrs Hassan said, "Give me a minute to think." Mr Futterman said: "All right."Mrs Hassan then said, "I can't remember, off hand. But I have his card." Mr Futterman asked, "Was that the same attorney that prepared the contract of sale to Mr.Kishore and Mr Palmour?" Mrs Hassan said, "No." Mr.Futterman asked," That was another attorney." Mrs Hassan answered, "Yes." Mr Futterman asked, "To your knowledge, was acontract of sale prepared?"Mrs Hassan said, "Yes."Mr Futterman asked,"Was the lease—the original ofthe lease —shown to that attorney?" Mrs Hassan said, "Yes." Mr Futterman asked, "Was that shown to the attorney before you gave it to Buck -ingham Realty, or after that?" Mrs Hassan said, "I don't know. I gave it tothe real estate office,and I told them those werethe papers. He took care of it. Because I was referred to that lawyer by the real estate office."Mr Futterman asked, "Did your lawyer prepare a con -tract?" Mrs Hassan said, "Yes." Mr Futterman then said, "I am go -ing to demand the name ofthe attorney who prepared this contract, and his address." Mr Futterman asked, "Did you sign a contract of sale?" Mrs Hassan said," I can't remember." Mr Futterman asked, "Well, did your attorney ever show you the contract of sale?" Mrs Hassan said, "I can't remember what transpired."Mr Futterman ask -ed, "Did you ever sign a contract of sale, either with the broker, or with the real estate agency." Mrs Hassan said, "I can't remember." Mr Futterman asked, "Do you remember the name of the purchas-ers?" Mrs Hassan answered, "Yes." Mr Futterman asked, "Tell us their name, please." Mrs Hassan said, "Buddy Husain," Mr Futter-man asked, "Was that the only name that was given as the purchas-er?" Mrs Hassan said, "Yes."

On page 62:4-12: Mr Futterman asked Mrs Hassan, "Did you in-form Buddy Husain that there was a tenant at 127-01 Liberty Avenue; meaning Miss Ally?"Mrs Hassan said,"No."Mr Futterman asked, "No. you did not. Is that correct?" Mrs Hassan answered, "That's correct. That's right." On page 162:7-25: Mr Seinfeld of Pearlman,Apat and Futterman(Ally's attorney), asked, "Prior to the

transaction involving the plaintiffs Kishore and Palmour (now de fendants) in this matter, did you have any other negotiations or con tracts to sell this property?" Mrs Hassan said, "No." Mr Seinfeld asked, "Now, you said you gave Mr Hussain the lease. Was it the original lease or a copy of the lease?" Mrs Hassan answered, "It was a copy. There was only one original, and that is with Ms. Ally" Mr Seinfeld then asked, "How do you know there was only one original copy of the lease?" Mrs Hassan answered, "Be cause I did it myself." Mr Seinfeld then asked, "Do you know if more than one original or duplicate original was executed?" Mrs Hassan answered, "Well, when I make the lease the original was with Ms. Ally, I kept a copy. Out of the copy that I had with me in the safe, before giving it to Hussain I made a copy o f it."

On October 1, December 4 & 24, 1992 plaintiff Ally's attorney wrote again to the defendants informing them that she would like to continue with her business and they (attorneys) would like the repairs done, but the new owners still refused to do the repairs. (R# 147-151). The new owners (defendants) Kishore and Palmour wrote a letter dated November 10, 1993 in which they agreed to accept the plaintiff's rent, they also accepted the rent from Nov ember 1993 to March 1994, (R#157&152) and they still refused to repair the damages they did, so on or around November1993 plaintiff Ally did the repairs and stocked her store and opened for business, but after the new owners saw that Ally's store was ready for business, water started to pour down again from the above apart ment which created an unhealthy condition, and damage to the stocks, when plaintiff Ally spoke to the new owners about the dam ages, they said that she was crazy, so again the plaintiff could not continue with her business. Where landlord, following a three-day notice to tenant informing her that the lease would terminate on the third day if the defaults, namely, use of the property as other than a dwelling and failure to pay taxes, were not cured, and prior to the commencement of summary proceeding, accepted rent from the tenant such conduct was inconsistent with the alleged "termina tion" of the lease, was in fact a reaffirmation of it, and, as a conse quence, the alleged "use" violation would not support the summary

final order in summary proceedings but is only terminated by issuance of warrant for tenant's removal. Kimmelman vTenenbaum, 1944, 182 Misc.558, 50 N.Y.S. 2d 912. see also Lauring M. Hewen Co., v Thibaut Realty Co., 1935, 154 Misc., 687, 277 N.Y. S 860; and also Tauszig v Kanton, 1921, 115 Misc. 366, 188 N. Y. S. 92.

Interlocutory is provisional, interim, temporary, not final. Something intervening between the commencement and to the end of a suit which decides some point of matter, but is not a final decision of the whole controversy. An interlocutory order or decree is one which does not finally determine a cause of action,but only decides some intervening matter pertaining to the cause, and which requires further steps to be taken in order to enable the Court to adjudicate the cause on merits. In re-Merle's Inc., C.A. Wash. 481F.2d 1016, 1018. The plaintiff Ally cannot understand how can hercounter claim be dismissed when the plaintiffs Kishore and Palmour (now defendants)never allowed her to continue with her business aftershe was restored to possession, and they continually destroyed the busness premises and the contents of the said premises, and even when they accepted her rent,she repaired the business premises and stock -ed it,but she still could not do her business in peace before the trial. So because of the continued destruction by the defendants,on Febru -ary 22, 1994, just a few months before the trial, the plaintiff Ally's new attorney Mr Goldberg, informed the defendants (Kishore and Palmour)about the unhealthy condition they are creating inthe plain -tiff's store premises. (R#169). The plaintiff Ally had paid her attorney approximately $35,000to represent her and if he had produced the facts and evidence that was produced at the deposition of the original landlord Nazmoon Hassan, may be the ruling of the jury would have been different, however, Honorable Justice Posner did say that the plaintiff Ally was illegally evicted on March 10,1988by the original landlord Nazmoon Hassan. There was a trial after that, between Ally and Hassan for the illegal eviction, and on January19, 1996 a judgment was entered granting Ally a money judgment of $3,000 (three thousand dollars) against Hassan. (R#236).

After the trial plaintiff Ally was at the Supreme Court Courthouse

when she saw her previous attorney,they greeted each other and he asked her how the case was going, she told him not very good, and she also told him that the jury said that she changed the lease from oneyear to 11 years, then he asked if her attorney did not produced the forged lease (R#174) that Nazmoon Hassan (the original land lord of the building) produced at the deposition, then she remem bered the deposition and the lease, she told him, "No, "they chat for a few minutes and he wished her good luck and left. few days after that, again plaintiff Ally was at the Court house when she saw one of the previous attorneys of the defendants Kishore and Palmour, they greeted each other and he al so asked how the case was going, she told him not very good, and he could not understand why, so he asked what happened and she told him about the lease, then he said, "but didn't your attorney produced that forged lease which Nazmoon Hassan produced at the deposition?" The plaintiff Ally said, "No," the said attorney could not understand why the plaintiff's attorney did not produce the forged lease and the facts that was produced at Mrs. Hassan's deposition,however,they chat for a few minutes and he wished her good luck and left. Since plaintiff Ally realized that hernew attorney did not produced the facts and evidence of the deposition of the original landlord Nazmoon Hassan,which may have changed the jury's decision on the lease, she made a cross-motion dated August 24, 1994, to modify or vacate the interlocutory judgment on the grounds of newly discovered evidence.(R#176).

On October 4, 1994 the defendants Kishore and Palmour made a motion before Hon.Judge Herber A.Posner for the Judge to punish Ally for contempt of Court for failing to comply with the judgment and for sanctions and costs."(R#178).But the plaintiff Ally was not in contempt of the Court,for the Court did not order the plaintiff to vacate the premises, the Court said that the plaintiffs Kishore and Palmour (now defendants) have judgment against defendant (now plaintiff)restoring them to immediate possession,but,the part of the judgment which said that defendant Ackleema Ally (now plaintiff) must immediate vacate the premises, unless said defendant (now plaintiff Ally) paid plaintiffs(now defendants Kishore & Palmour) one thousanddollars on or before June1,1994,and in that event said defendantshall vacate said premises on or before June 31,1994,was

scratched off, so plaintiff Ally was not ordered by the Court to remove immediately from the business premises, as a matter of fact, the plaintiff Ally was not ordered by the Court to remove at any time, however, on or about October12,1994 by order Justice Posner denied the motion to stay the execution of the judgment and the cross-motion for contempt was withdrawn. During the first week of October 1994 photographs were taken of the inside of the store after Ally did the repairs and stocked the store for business before the trial, but the new owners (defendants) refused to accept her rent after the trial.(R#180). On October 15,1994 plaintiff Ally packed all of her household property from her apartment into the store premises for a few weeks until she gets her new apartment, since the building that she was living in was sold. She only took with her 2 pairs of shoes and a few pieces of clothing, and her case materials. Everything that she owned all her life was packed in there. On October 31, 1994 plaintiff Ally appeared in court for a hearing on the motion to vacate or modified the judgment, Justice Posner denied themotion but gave Ally permission to produce her undisclosed-evidence that was produced at the deposition, at the trial for damages.

SUBSEQUENT WRONGS BY THE DEFENDANTS

Since the defendants(Kishore and Palmour) knew that if plaintiff Ally produce her evidence there may be a change in the verdict, on the said October 31, 1994 the new owners (now defendants) and their employees forcibly broke the locks and entered Ally's store premises and remove some of Ally's personal property, household property, and other items from the store premises. Let the sworn affidavit of an eye witness and a photo-copy of the pin that was sawed off the lock show the evidence to this fact. The pin is in the case materials of Index #023087/95 in the Court's record's room, should the Court need to see it.(R#185-187). On November 1, 1994 the two (2) workers of the defendants were again seen inside the store removing the stocks from the shelves, and they were arrested, let the evidence show the fact that the workers were arrested. (R# 188-189).

Upon information and belief the defendants and their attorney lied to the district attorney and the Judge that they had final judgment and they had a right to be in the store. Upon information and belief the workers accepted an offer of ACD from the Criminal Court and eventually thecase was dismissed and sealed, and because this case is sealed and plaintiff Ally is a pro-se she could not see the re cords, so should this Court needs further information on that case, then the Court can request the records from the Criminal Court, the case number is 94Q040875.

Pursuant toAmendment 14#1 West's F.S.A.#821.18 which forbids one person or persons to trespass upon the property of another with a malicious and mischievous intent. Adderley v State of Fla., Fla.1966, 87 S. Ct., 242, 385 U.S. 39, 17 L. Ed. 2d 149 rehearing denied 98, 385 U.S.1020, 17 L.Ed. 2d. 559. Pursuant to Amend ment 14#1: Ordinance providing that no person, without privilege to do so, shall recklessly enter or remain on land or premises of another. Davis v Johnson D.L.Ohio 1976, 424 F. Supp. 168. Pursuant to Amendment 14#1: Statute making a person guilty of second degree burglary If he enters or remains in an occupied structure with intent to commit any crime therein under circum stances not amounting to first-degree burglary. An execution dated August 5, 1994 was prepared by the defendant Richard S. Graver and was delivered to the New York City sheriffs for execu -tion, the said defendant made a false representation, which caused damages (fraud), when he made the City Sheriffs to believe that a final judgment was granted to his clients and authorizing the City Sheriffs to seize the plaintiff Ally's business premises, and this execution was not served on the plaintiff Ally (R#171). However, the said d efendant did admit that he wrongfully prepared an execution which caused Ally's eviction. A lease is not cancelled by service of precept or making of final order in summary proceed ings but is only terminated by issuance of warrant for tenant's re moval. Kimmelman v Tenenbaum, 1944, 182 Misc. 558, 50 N.Y.S. 2d 912. In view of provision of former C.P.A. #1432 that where a final order in dispossession proceedings is in favor of petitioner, Judge or Justice must issue a warrant under his hand, there is no authority in the clerk of Court or his deputy to issue such a warrant

unless directed to do so by Justice presiding. Emray Realty Corp. v De Stefana 1957, 8 Misc.2d 988.

A warrant in summary proceedings is issued when made out by the Justice and by him delivered to the clerk for use.Ash. v Purness, 1890, 16 Daly 189, 11 N. Y. S.54. The 4th Amendment protects the rights of the people against unreasonable searches and seizures, in this action there was no warrant for the seizure of plaintiff Ally's business and all the contents of the said business premises which in -cluded all of her personal and household property, but they were seized,and there was no probable cause forthe unreasonable seizure since the judgment in the action 5610/91 was only an interlocutory judgment and not a final judgment,and a warrant in a summary pro ceeding is equivalent of execution in an action and cannot issue until final order is made in favor of landlord. Greenberg v Cagle, 1961, 212 N.Y.S. 2d.767. There is still no final order in the action 5610/91in favor of the new owners, only an interlocutory judgment, and no warrant was issued to the City Sheriffs by the Judge for the plaintiff Ally's eviction, for no warrant is to issue except upon probable cause in Re Dell, 1968, 56 Misc. 2d 1017,290 N.Y.S. 2d 287. RPAPL# 749 Subd. (1) provides: that upon rendering a final judgment for the petitioner in summary proceeding, the Court shall issue a warrant. C.P.A. providing for a final order instead of Judg- ment it was held that a warrant issued in a summary proceeding without a final order first having been made in favor of the peti tioner therein was a nullity Brookley v Ives (AD3 1935) 243 A.D. 487,278 N.Y.S.147.

A 72 hour notice dated August 18,1994 was prepared by the City Sheriffs, claiming that, "a final order has been made in the above proceeding awarding to the plaintiffs (now defendants) possession of the premises now occupied by you at 103-25 127 Street, and that an order has been issued commanding the Sheriff to remove you therefrom and put the plaintiff (now defendants) in possession thereof." (R#173). This 72 hour notice was never served to the plaintiff Ally, and the City Sheriffs made a false representation when they said that a final order has been made in the proceeding.

when it is only an interlocutory judgment. However, Sheriff's were not justified in entering plaintiff's business premises without a war rant, and the seizure of property without warrant is unlawful. Ten ant at will or sufferance was entitled to notice under this section and, where no such notice was given, landlord could not maintain proceedings to recover premises. Titus v Thannhauser, 1946, 61 N.Y.S. 2d 617. Monthly tenant as well as tenancy from month to month is for an indefinite period and must be terminated by 30 day notice. Pecoraro v Ryan,1963, 39 Misc. 2d 949, 242 N.Y.S. 2d 301. RPAPL#749 Subd. (1) provides:- "that upon rendering a final judgment for the petitioner insummary proceeding, the Court shall "issue a warrant directed to the sheriff of the County," but the Court did not issue a warrant to the City Sheriffs for the plaintiff's eviction, and the judgment was only a interlocutory judgment and not a final judgment. Party seeking relief under this clause must establish first,that he has been deprived by State of "Life, liberty or property"and second, that the deprivation occurred without "due process" Wright v Mahan, D.C.Va.1979,478 F. Supp.468 affirmed 620 F.2d 296. West F.S.A #713.67-713.69permitting ejectment of tenant and the impressment of a lien infavor of landlord on tenant's personal property on premises without notice, hearing of judicial participation of any sort are unconstitutional as violations of this amendment. Barber v Radar,D.C.Fla.1972,350 F.Supp.183. West's F.S.A.#713.67-713.69permitting innkeeper to sei e guests' property without prior notice or hearing for alleged non payment of rent.Violated this clause. Johnson v Riverside Hotel Inc., D. C. Fla, 1975, 399 F. Supp. 1138. Constitutional Amendment 14#1 said: Americans have constitutional right to privacy which springs from several of the Bill of Rights Amendments and is incorporated in the due process clause protected by this Amendment14#1.Plante V. Gonzalez, C.A.Fla.,1978,575 F.2d 1119. Constitutional Amend ment 14#1said: Denial of due process is failure to observe that fundamental fairness e sential to every concept of Justice. Linden v Dickson, C.A. Cal. 1961, 287 F. 2d 55.

On December 14, 1994 the said defendants Kishore and Palmour and the City Sheriffs willfully and illegally broke the locks as well as changed the locks on the store premises, they deliberately and un

reasonably seized the plaintiff Ally's business premises and all its contents which include all of her stocks, machinery, equipments, and all of her household and personal property etc., even though they knew that they never produced or served a warrant for the seizure, they also knew that they never served a 72 hour notice on the plaintiff, and they also knew that there is still no final order or judgment in the action 5610/91 in favor of the new owners, only an interlocutory judgment. yet, they kept the business premises and all its contents in there possession and they were seen many times mal iciously and tortiously destroying and removing Ally's property, also let the form 064 show the fact that the City Sheriffs did admit that they gave possession to the defendant Chandra Kishore on December 14, 1994, pursuant to an order of possession/execution to deliver real property issued out of Supreme Court, Queens County, to the Sheriff of the City of New York, New York County Division.(R#190). The City Sheriffs again made a false representa tion when they said that the order of possession/ execution was issued out of the Supreme Court to the Sheriff of the City of New York, when the execution was from the defendant Mr Richard S. Graver and not from the Supreme Court.

ConstiitutioArt1#7said: "Where State takes property, owner must be indemnified so that he may be put in same relative position,in so -far as this is possible, as if taking, had not occurred. Rose v State, 1969, 24 N.Y.S.2d 81, 298 N.Y.S. 2d 968, 246 N.E.2d 735." Consti tutional Amendment 14#1 Property Law said: Although underlying substantive interest is created by an independent source such as state law,federal constitutional law determines whether that interest rises tothe level ofa legitimate claim if entitlement protected by this clause.Memphis Light, Gas and Water Division v Craft, Tenn.1978, 98 S.Ct.1554,436 U.S.1, 56 L.Ed 2d.30. Constitutional Amendment 14#1, Property Law: All forms of property are entitled to due pro- cess protections. Trapper Brown Const.Co., Inc v Electromech Inc., D.C.N.H.1973,358 F.Supp.105. The right to privacy under Amend ment 4 is guaranteed against state invasion by this amendment and must be enforced by same exclusionary rule found in the Federal Courts. U.S. Ex rel. De Forte v Mancusi, C.A.N.Y. 1967, 379 F.2d 897, affirmed 88 S.Ct. 2120, 392 U.S. 364, 20 L.Ed 2d 1154.

Constitution Amendment Art 1#12 said: All searches and seizures conducted without a warrant are perse unreasonable, with but few well established exceptions. People v Watt,1983,118 Misc.2d 930, 462 N.Y.S. 2d 389. The defendants then willfully and intentionally kept the business premises and all its contents in their possession, and it was very upsetting, sad, and heart-breaking to see the way they destroyed all that Ally had owned. It took Ally all her life to accumulate all that she had, and to stand there and see it all being maliciously and tortiously destroyed and removed was not very easy. Ally had lived in London for nineteen years and most of her crystals china and Queen Anne silver plated things came from there, and they were very expensive. The defendants were seen many times destroying and removing Ally's possession, house hold and personal property,very important documents,equipments, machinery, all the stocks and many, many, many more from the store premises. The police were called many times to witness the destruction because the defendants were fighting Ally when she tried to stop them from destroying her things, but they could not do anything to stop it, because they were seized by the New York City Sheriffs. Let the evidence show the facts. (R#191-203). After the seizure plaintiff Ally and the defendants Kishore and Palmour went back to the Supreme Court, Queens County and the plaintiff Ally told Hon. Justice Posner what the defendants did, and the Judge told Ally that she can sue them, the Hon. Justice Posner then asked to see the receipt of the Notice of Service of the 72 hour evic tion notice and the execution, but the defendants Kishore and Pal mour's attorney Mr Graver (defendant) could not produced it, be cause it was not served.

After the seizure of the plaintiff Ally's business premises and all its contents on December 14, 1994 by the City Sheriffs, the defend ants were seen many times willfully, maliciously, tortiously, and without any care (negligently) destroying and removing the con tents of the said business premises, including plaintiff Ally's household and personal property,very important documents,school materials, gifts, many, many years of research materials, books, very old religious books that are being used for research, clothing,

furnitures, fixtures and fittings, the stocks that were in the store, the equipments, and machinery, craft books and other items, certificates and diplomas, passports and other identity documents, immigration papers, baking thing, electronic items, other electrical items, and many, many, many more items the police were called in many times to look into the matter because the defendants is creating a fight with her when she tried to stop them,but they could not do any thing because they were seized by the by the City Sheriffs, so since a tenant's eviction did not operate as legal surrender of her right to possession of her personal and household property, and all the other items which were taken from the business premises. On or about December 21, 1994 plaintiff Ally moved by order to show cause why an order should not be entered stopping the plaintiffs (now de fendants) from destroying and removing the contents of the said store premises pending the trial on damages ,since, a trial date was granted,and since permission to produce new evidence was granted, and why a warrant for the arrest of the plaintiffs Kishore and Palmour should not be entered for break and enter also destruction and theft, and why an order should not be entered stopping the sale of the of the said property. The motion were opposed by the defendants, and on or about January 30, 1995, Justice Posner denied the motion.

Constitutional Amendment IV said:The guaranty of right of people to be secure against unreasonable searches and seizures,but only those that are unlawful because not based upon probable cause. Flores v U.S. C.A.5(TEX.)1956,234 F. 2D 604. It is the issuing of the warrant,and not the execution thereof,cancels the lease. Bergen Meat Co., v Chelsea 23rd Street Corp., 1953, 126 N. Y. S. 2d 826. Constitutional Amendment 14#1 said: This Clause requires not only that there be a deprivation of property but also some unreasonable or unreasoned imposition of liability. Pearson v Northeast Airlines Inc., C.A.N.Y.1962,309 F.2d 553,certiorari denied 83 S.Ct. 726,372 U.S. 912, 9 L.Ed.2d 720. The return date for the motion to renew was January 31, 1995 the defendants Chandra Kishore and Prabha Palmour nor their attorney Richard S. Graver appeared, so Justice Posner's clerk, Miss Brown called Mr, Graver and asked him if he forgot about the motion, Ally do not know what he said to her, but

Ally heard her telling him that Ally would like to remove some of her things from the store premises, Miss Brown then told Ally that Mr,Graver said that he will not allow her(Ally)to remove anything unless she pays $1000.00. On May 8, 1995 the plaintiff Ally saw Prabha Palmour and a worker removing and willfully destroying her things that are in the store, Mrs Palmour wanted to create a fight with Ally, so she called the Police to look into the matter, but the police could not do anything because they were seized by the City Sheriffs. The defendants were still destroying and removing the contents of plaintiff Ally's business premises, when at this point plaintiff Ally was very confused, because she first went to the Supreme Court, Queens County for help, since this action was in that Court, but received no help, she called the police but they could not help because the business premises and all its contents were seized by the City Sheriffs, the attorney Richard S. Graver fraudulently prepared an execution ordering the City Sheriffs to seize the plaintiff Ally's business premises without a final order or final judgment from the Court, the City Sheriffs seized the business premises with all its contents including all of the plaintiff Ally's personal and household property without a warrant and with out serving the 72 hour notice, the new owners of the building accepted her rent for a few months, then suddenly refused to accept it, however, since these were new and subsequent wrongs by the defendants Kishore, Palmour, the City Sheriffs and Richard S Graver, and with her being a pro-se she was not sure what to do, so she started by first filing an order to show cause in the Land lord and Tenant Court against the defendants Kishore and Palmour on or around May 15, 1995 and plaintiff Ally was granted an order from Judge Schmidth, staying the defendants Kishore and Palmour and from reletting the subject business premises. This case was ad journed for June 12, 1995.

Although the defendants knew that there was aCourt Order not to remove Ally's things or relet the subject premises, yet, on May 31, 1995 plaintiff Ally received a phone call that the defendant Palmour was inside the store destroying her things andremoving them from the store premises, so Ally called the police before she went there, when Ally arrived there she found that the door of the store

was locked from inside, so she started to take photographs of the de fendant Palmour from the outside of the glass windows when suddenly Palmour (defendant) disappeared, Ally could not understand where the defendant Palmour went, because the only entrance and exit was the front door which was locked from inside. Then a pass -er by told Ally, "Look she is up there screaming and shouting that you are killing her with a knife." Lucky for Ally the police arrived at the same time, so, Ally gave the police the order from the Judge who was from the Landlord and Tenant Court. When the police officer told the defendant Palmour to come down and open the store door, she refused to do so, so he started to bang the door to get it open, then Palmour told the officer that she will come down and opened it, when the officer saw the hole in the wall, so he told Ally to cover it with a board, and warned defendant Palmour that she should immediately lock the store premises, because Ally had a order from the Court. Late that night approximately 8 or 9 pm when the said police officer was off duty, the defendants Chandra Kishore and Prabha Palmour went tothe police precinct and the defendant Palmour started to cry and pretended that she was badly beaten up, and when the police offered to take her to the hospital she refused to go, and Ally was never near to her, for she was in a locked building and Ally was out on the sidewalk. Around the same time Ally went to the precinct to ask the police if they could check the second floor of the store building to see if the defendants have any of her things up there, or if they removed them complete -ly from the building, when to Ally's surprise one of the police officers came up to her and said," Miss Ally, I am very sorry about this, I know that it is wrong but I can do nothing about it, the old woman really fooled the Superintendent and he told me to charge you." Ally asked the officer if the Superintendent spoke to the officer that was on the scene and he said, "No, because the officer was off duty." The next day Ally went back to the precinct and asked the officer who charged her if he spoke to the officer who was on the scene and he said, "Yes," he also said that the officer said that charging Ally was nonsense, for the old lady lied. Ally was not arrested but she was given a desk charge. This case went on for approximately one year in the Criminal Court then it was dismissed because the defendant Palmour lied to the prosecutor that

she had a stroke and she was too sick to come to trial, yet, she was seen many times in the Supreme Court around the same time she claimed that she could not go to Court, so the time to prosecute was passed and the case was dismissed and sealed. The Commissioner of Police was informed of the Police Superintendent's action. Mr Graver had represented the defendants in the Supreme Court, Queens County, action Index #5610/91 and again in this Landlord and Tenant Court, so upon information and belief he knew what his clients were doing. The new owners Kishore and Palmour's (defendants) attorney Mr Graver opposed the motion and it was dismissed with costs on June 12, 1995, because the defendants' Kishore and Palmour's attorney Mr. Graver told the Judge that his clients have final judgment against the plaintiffAlly. Since the illegal and fraudulent execution dated August5,1994 was prepared by the defendant Richard S. Graver and was delivered to the New York City Sheriffs for execution, and RPAPL#749 Subd. (1) provides:-that upon rendering a final judgment for the petitioner in summary proceeding, the Court shall issue a warrant directed to the sheriff of the County, therefore plaintiff Ally holds the attorney Richard S. Graver and the City Sheriffs (defendants) responsible for the destruction because (1). The attorney Graver knew that only the Court can issue a warrant, and that the judgment was only an interlocutory judgment not a final judgment yet he fraudulently made that execution and (2).The sheriffs knew at all times that the execution was from the attorney and not from the Court and that the 72 hour notice was never served. The 5th Amendment said: Due process clause requires at minimum, that government provide notice and some kind of hearing before deprivation of property interest notice; notice provided must be reasonably certain to inform those affected and an opportunity to be heard must be given at meaningful time and in meaningful manner. Propert v District of Columbia, C.A.D.C.1991,948 F.2d 1327, 292 U.S.App. D.C.219. Constitution Art1#7 said, "To establish deprivation of property without due process of law, party must demonstrate that property rights exists and that it has been confiscated, extinguished, destroyed or that essential attribute of property has been taken away so that its value has been impaired or its use restricted, or interrupted by constitutionally prohibited acts and with-out just compensa-

-tion. Young v City of Binghamton, 1982, 112 Misc.2d 1017, 447 N.Y.S. 2d 1017.

In general, due process requires that individual be given notice and opportunity to be heard before being deprived of property inter -est. Amstar Corp., v M/V Alexandros T., D.C. Md. 1977, 431 F. Supp. 328. The 72 hour notice dated August 18, 1994 that was made out by the City Sheriffs (defendants) said that "a final order has been made in the above proceeding awarding to the plaintiff (Kishore & Palmour) (now defendants) possession of the premises now occupied by you at 103-25 127 Street, and that a order has been issued commanding the sheriff to remove you therefrom and put the plaintiff (Kishore & Palmour), in possession thereof." (R# 173). There is still no final order yet on that action Index #5610/91, and also let the annexed exhibit form 064 (R#190), show the fact that the City Sheriffs did admit that they gave possession to the defendants(Kishore and Palmour) on December 14, 1994, there is still no final order yet on that action Index # 5610/91, and again they made a false representation when they said, "We have this day of December 14,1994 given possession of premises 103-25 127 Street, Richmond Hill, to Chandra Kishore pursuant to an order of posses sion/execution to deliver real property issued out of Supreme Court, Queens County, to the Sheriff of the City of New York, New York County Division. So on account of the fraudulent actions of the attorney and the City Sheriffs, everything that the plaintiff Ally had owned all her life was completely destroyed and removed, except -ing 2 pairs of shoes, a few pieces of clothing, and her case materials, the life of plaintiff Ally and her children was completely destroyed , for she was a one parent family, and her business was the only source of income that she had, but her business and all the contents of the said business premises, which include all of her household and personal property, and all her income was seized which caused extreme emotional distress, and extreme hardship.

CPLR 7102(a)makes clear that in an action to recover possession of a chattel, the sheriff may not proceed with a prejudgement seizure of the chattel without prior authorization of the Court. CPLR 7102(d) which was substantially amended in 1978 to comply with

due process, specifies procedures for obtaining an order of sei zure. Pursuant to CPLR 7102: Former provisions of this section govern-ing procedure in an action to recover a chattel which permitted the prehearing seizures of subject matter of the action with out the intervention or order of a judicial officer failed to conform to strictures of U.S.C.A.Const. Amend. 4, made applicable by U.S. C.A. Const. Amend. 14, and were unconstitutional on their face. Laprease v Raymours Furniture Co., 1970, 315 F. Supp. 716. Pursuant to CPLR 7102: Procedural due process requires that notice and an opportunity to be heard be provided the alleged debtor before his property is seized pursuant to this article,or at least that the creditor present to a judicial officer the circumstances allegedly justifying summary action and failure of this section to do so provide rendered it unconstitutional as violative ofprocedural due process. Laprease v Raymours Furniture Co., 1970, 315 F. Supp.716. Constitution Art 1#7 said: Private property cannot be taken for a public purpose under the police power without just compensation. City of Rochester v Olcott, 1939, 173 Misc. 87,16 N.Y.S. 2d 256.

The requirement in Amendment 5 of just compensation for taking of private property for public use applies to the States, and it is incorporated into the meaning of "due process," required by this amendment. Foster v City of Detroit,Mich.,D.C.Mich.1966. Constitution said:"Takings clause of the 5th Amendment states that private property shall not be taken for public use without just compensation; this clause is made applicable to the states through the due process clause of the 14thAmendment.219 South Atlantic Blvd. Inc v City of Ft.Lauderdale, Fla., S.D.Fla.2002, 239 F .Supp. 2d 1265.Constitution 5th Amendment said: Substantive due process is violated if government actor deprived plaintiff of identified interest in life liberty or property protected by 5th Amendment, or if govern ment actors'conduct shocks the conscience. Aversa v U.S. C.A.1 (R.1) 1996, 99F.3d 1200. Constitution 5th Amendment said: Any claim, 5th Amendment takings clause pre-empted motel owners' substantive due process claim against City, based on ownership allegations that city closed motel for code violations and refused to issue building permits necessary for owners to bring motel into complaince, all in order to drive motel out of business; if allega

tions were true, such actions would be "taking" of owners' property, and takings clause provided explicit textual source of constitu tional protection against type of conduct challenged by owners. Patel v Penman,C.A.9(Cal.,) 1996, 103F.3d 868, certiorari denied 117 S. Ct. 1845, 520 U.S. 1240, 137 L. Ed 2d 1047. Constitution 5th Amendment said:- Prohibition against taking of private property without justcompensation applies against the states through Amend ment 14. Webb's Fabulous Pharmacies, Inc, v Beckwith, Fla.,1980, 101 S.Ct. 446,449 U.S.155, 66 L.Ed. 2d 258.

ACTIONS 21625/95 & 023087/95 WAS CONSOLIDATED FOR JOINT TRIAL: CONTRACT AND TORT

A Summons and verified complaint dated June 11, 1995 was then filed in the Supreme Court,County of Queens the plaintiff Ally com menced this action Index#21625/95,against the defendant s Kishore and Palmour for breaking into her business premises and removed some of her personal, and household property and other items from the store premises on October 31,1994, when their workers were arrested. (R#217). The defendants Kishore and Palmour did not an -swer the plaintiff's verified complaint, so she moved for default judgment, then, the defendants appeared before Hon. Justice Goldstein when a stipulation was agreed upon,that the plaintiff will with draw her motion for default judgment and extend the defendants' time to answer her complaint, and also for the action to be transferr -ed to Justice Posner, since the original action Index #5610/91 was before him. (R#224). When this action was transferred to Justice Posner the defendants'still didnot answer the verified complaint, so the plaintiff then moved again for default judgment,then the defend -ants, moved by cross-motion to dismiss complaint claiming Res Judicata of the previous action Index#5610/91.On the return date of this motion,adate was fixed for May10,1996for a conference before Hon. Justice Posner. An order was signed on May 17,1996, by Justice Posner which said:"Upon the foregoing papers it is ordered that this motion and cross-motion, following a conference before the Court on May10, 1996,are disposed of as follows:" "The defendant (Kishore and Palmour) is confusing the prior action with this new complaint for damages. The motion and cross-motion are denied

and defendant's time to serve and file an answer is extended for 20 days after service of a copy of this order."(R#225). This order con firmed to the defendants,that their new wrongs are not ResJudicata of the action Index #5610/91. On October 19, 1995, plaintiff Ally commenced another action Index #023087/95 against the defendants Kishore and Palmour forthe complete destruction of the plaintiff's business, the contents of the said business premises which include all of her household and personal property and for the violation of Section #853 of the Real Property Action and Proceed ing Law, the defendants Richard S. Graver and the City Sheriffs were named but not summoned to appear or plead at this time. (R# 227-235). The order of Justice Posner dated May 17, 1996(R#225) had extended the defendants time to serve and file an answer to plaintiff's verified complaint Index #21625/95, for 20 days after the service of a copy of the order. But according to the plaintiff's knowledge of the fact, the defendants did not serve their papers within the said time, so the plaintiff made a motion for summary judgment and to strike the defendants' answer,the defendants cross -moved and told the Judge of the plaintiff's other action Index #023087/95,but Justice Posner who knew nothing of what the other action Index #023087/95 was about at the time,made a order dated November 13, 1996,(R#238)which said as follows: "Upon the fore going papers it is ordered that this motion by plaintiff for summary judgment and to strike defendants' answer is denied since there are clearly triable issues of fact and defendants' answer was timely served in accordance with this Court's order of May 17,

The defendants are awarded$500in costs and sanctions in view of plaintiff's frivolous conduct in commencing separate actions for the same relief and bringing on meritless motions. The plaintiff is directed to pay said sum of $500by check or money order payable to defendant's attorney Socrates Scott L. Nicholas, Esq., within 20 days of service o f a copy of this order." (1). This order sanctioned the plaintiff Ally $500 because she brought another action in another Court claiming that it was for the same relief,when it was for a completely different cause of action.(2). At this time the plaintiff did not produce her evidence, the pin that the defendants broke off from the locks of the store premises and the sworn affidavit of the

witness who saw the defendants breaking the locks. (R#239-241) The plaintiff then moved by motion to stay the execution of the said order dated November 13, 1996, but a order dated January 13, 1997 was signed by Justice Posner, which said as follows: "Upon the foregoing papers it is ordered that this motion and cross-motion are disposed of as follows: The plaintiff previously has been admonished by the Court to cease making meritless motions. The instant motion is

not only without merit it is also incomprehensible. Accordingly, the defendants are awarded $500 costs and sanctions to be paid to their attorney, Socrates Scott Nicholas, within 20 days of service of a copy of this order (R#242). The plaintiff is stayed from making any further motions until the costs and sanctions awarded by this order and the prior order of November 13, 1996 are paid. The plaintiff is also stayed from any further proceedings in this action until she res -ponds to the defendants' interrogatories dated June 21,1996. The costs and sanctions of $1,000.00 (One thousand dollars) was then paid to the defendants Kishore and Palmour's attorney Socrates Scott L. Nicholas, on July 8, 1997.

The defendants did not answer the plaintiff 's verified Complaint Index #023087/95, so she moved for summary judgment on or about May 21, 1996,and since the defendants still did not appear or plead in this action, she again moved on June 17, 1996, then, the defendants Kishore and Palmour cross-moved to consolidate the two actions Index #023087/95 and # 21625/95. On August 28,1996 a memorandum was signed by Honorable Joseph. M. Lane, Justice Lane consolidated the actions Index No 23087/95 with the action Index 21625/95 and he said, "After due consideration, the cross motion is granted to the extent that the Court orders the within actions combined and respectfully referred to Hon. Herbert A. Posner for joint trial due tothe fact that Justice Posner hasthe action with the lower Index No.21625/95. The main motion is denied with out prejudice to renew before Justice Posner at the appropriate time. Even though the defendants cross-move for this order, they did not take the order, the plaintiff Ally then served and filed a proposed order, which was signed on December 2, 1996,the order said

that the actions are combined for joint trial and that each shall retain its own Index # and separate notes of issue shall be filed for each action (R#243-246). Pursuant to FRCP #28:Rule42:An order consolidating two actions did not merge them, but was only a convenience merely obviating duplication of papers and the like. Greenberg v Giannini, C.C.A.N.Y.1944, 140 F.2d.550, 152 A.L.R. 966. After the actions Index No.21625/95 and 023087/95 were consolidated for joint trial by Justice Posner without prejudice to renew summary judgment on Index #023087/95, so on or about December 27, 1996 the plaintiff renew her motion for summary judgment on Index #023087/95, but it was denied, by order dated February 13, 1997. On March 24, 1997 the plaintiff Ally filed two separate Notes of Issue, one for Index No. 21625/95 and the other for Index No.023087/95.(R#247). Then Mr Nicholas (defendants' Kishore and Palmour's attorney) wrote a letter to Ms Annmarie Brown (Justice Posner's Law Clerk) which said: "Dear Ms Brown: I have been served by Ackleema Ally with a Note of Issue and Certificate of Readiness for Trial, dated March 21 1997,as well as a "Notice of Confirmation," dated February 21, 1997 (copies enclosed). The plaintiff, Ackleema Ally, has failed to comply with either of the decisions of Hon. Herbert A Posner, filed and entered on November 25, 1996 and January 27, 1997, for which notices of Entry were each served on January 30, 1997. She has neither provided her answers to defendants' Interrogatories, nor has she paid the imposed sanctions, totalling $1,000. It is my understanding that the outstanding discovery of the information and documents requested through defendants' Interrogatories, and the requirement that Ms Ally pay the outstanding sanctions award, shall survive plaintiff's filing of a Note of Issue. This will permit plaintiff to comply with the Court's directives without removing this case from the trial calendar. (R#249).

On April 19,1997 the plaintiff Ally wrote to MsAnnmarie Brown (Justice Posner's Law Clerk) as reply to Mr Nicholas letter to her, which said : "Dear Ms Brown: This is to inform the Court that my answers to the defendants interrogatories had been rejected by the defendants attorney also my Renew Notice of Confirmation, however pursuant to CPLR 3140#9 I do not have to answer the defen

dants interrogatories again, which is as follows: Pursuant to CPLR 3140 #9 provides: Where in one of two actions for which joint trial had been directed, statement of readiness had been filed, defendants was not entitled to issuance of order directing plaintiff in other action to answer interrogatories. Rudolph v Bowling Corp.of Plain view,1971, 67 Misc.2d 463, 324 N.Y.S. 2d 448. I do hope that this CPLR3140 #9 Rule of the New York Civil Procedure Law and Rules will clear up all existing problems concerning the interrogatories ofthe defendants. R#250. On or around April 30, 1997 the defendants Kishore and Palmour made a motion to strike complaint with prejudice or to prohibit plaintiff from supporting her claims and for an award of sanctions. The plaintiff oppose this motion but a order dated May 28, 1997 was signed by Justice Posner, which said as follows: Upon the foregoing it is ordered that this motion is granted and the complaint in this action is dismissed with prejudice. The plaintiff has failed to comply with this Court's orders of November 13, 1996 and January 13, 1997 and therefore cannot proceed with this action. Moreover, she has inundated this Court with merit less and incomprehensible motions and submissions despite repeated instructions by the court to cease.As a result both the defendants and the Court have been unnecessarily inconvenienced and put to needless expense of time and resources.(R#251). According to this order only the action Index # 21625/95 was dismissed with prejudice, but the action Index #23087/95 was not dismissed with prejudice.this action was not merge into one action with Index#21625/95 it had its own note of issue and own index #, therefore plaintiff Ally believes that this action was not dismissed, and certainly not on the merits.

Pursuant to FRCP Rule 41 provides: Dismissal with prejudice of class members who failed to answer interrogatories or appear for depositions was improper where there was no attempt to determine whether information sought was necessary or whether interrogatories propound to the class members or depositions were a mere stratagem todiminish class membership and there was no showing with respect to merits of defendants' request for discovery. Clark v Universal Builders Inc.,C.A.Ill.1974,501 F.2d 324,certiorari denied , on remand 409 F.Supp.1274. Plaintiff argued that pursuant to CP

LR 1502. In order to charge the sole property of those joint obligators who were named but not served in the first action,a new action must be commenced within six years from the entryof judgment in the first action.Hofferberth v Nash 1908,191N.Y.446, 84 N.E.400. In the second action the first judgment is not res judicata,since this section mandates that the second action proceed as though the first one had not been brought.Pursuant to CPLR 3, Art.6: In the joint trial of separate actions there are separate verdicts, taxations of costs and judgments.Vidal v Sheffield Farms Co., 1955, 208 Misc. 438, 141 N.Y.S. 2d 82.

ACTION INDEX NO. 23514/97: CONTRACT AND TORT

A summons and verified complaint dated October 2, 1997 was then filed in the Supreme Court, Index#23514/97(R.130) the plaintiff then joined all the tort feasors in this new joint tort feasors actions, since Mr Graver(Kishoreand Palmour's attorney)willfully, intentionally and wrongfully made a fraudulent execution, which he admitted in his motion to dismiss, when he said, "The only factual allegations that appear to be relevant to a claim Ally thinks she has against me, is her allegation that I wrongfully prepared an execution which led to her eviction from the premises."(R#270: verse#16). The plaintiff joined all the tort feasors for their wrong doings in this new action Index#23514/97 which is sounding in fraud, collusion, intentional, collusion, conversion, illegal willful, negligent, malicious, and tortious acts, but the defendant-respondent Mr Graver made a motion to dismiss pursuant to CPLR3211 (a)(1)(5)and (7) to dismiss the complaint upon the grounds that the defense is founded upon documentary evidence, that the cause of action against the said defendant may not be maintained because of collateral estoppel, and res judicata and that the complaint fails to state a cause of action and for an order pursuant to 22NYCRR #130-1 and CPLR #8303-a imposing sanctions in the sum of $10,000 for commencing a frivolous cause of action. (R.270-278). Pursuant to FRCP 28-Rule 8: Ordinarily, res judicata is affirmative defense, not raiseable by motion to dismiss. Philadelphia Transp. Co., v South Eastern Pennsylvania Transp. Authority D.C. Pa 1968, 282 F. Supp.789.

The plaintiffAllythen made a cross-motion for summary judgment and dismissal of the main motion pursuant to CPLR 3211(b)and on the grounds that (1).Pursuant to CPLR 3211/10:An affidavit cannot qualify as"Documentary Evidence" to support a dismissal based on paragraph 1. (2) Under former C.C.P.1876#2244:Collateral Estopp -el and Res Judicata could be raised only by answer and not by motion to dismiss and the Res Judicata Rule is only when a final judgment is rendered on the merits,so far there is no final judgment on the merits, Collateral Estoppel Doctrine is Prior Judgment between same parties on different cause of action is an estoppel, in this action the parties are not the same and the cause of action is not different from the other two actions. (3). Pursuant to CPLR 3013#6: Forms of action have been abolished, and the verified complaint verse #82 stated willfully, intentionally, knowingly, and negligently (without care), and for an order denying sanctions of $10,000 upon the grounds that my cause of action is not frivolous, my business and contents of the said business premises were destroyed, including all my household and personal property, so I am claiming the damages caused, against all the defendants. R.279-308). Amend ment 14#1 said: "Right of action by one injured as result of negli gence of another against the negligent party to recover damages sustained by reason of such injury is "property" within protection of this amendment. Martinez v Fox Valley Bus Lines, D.C.111. 1936, 17 F.Supp.576.Plaintiff Ally argued in her cross-motion that pursuant to CPLR 3020/14, plaintiff in personal injury action estab lished meritorious cause of action since verified complaint may be considered equivalent to affidavit of merit. Gibson v D'Avanzo, 1984, 99 A.D. 2d 766,472 N.Y.S.2d 12.(R#279-308). Plaintiff Ally also argued in her cross-motion that, a plea of res judicata is in its nature an "Estoppel" against the losing party from again litigating matters involving matters involved inprevious actions, but, the plea Civ.App.161 SE 2d 549, 555.(R#279-208).Plaintiff also said, under former C.C.P.1876#2244, which provided that in summary proceed ing dispossession proceeding the person in possession mayfile with the Judge who issued the process, or with the Clerk of the Court, a written answer setting forth matter constituting a legal or equitable defense or counterclaim, an objection of Res Judicata could be raised only by answer and not by motion to dismiss. Tritztuske v

Wauroski, 1903, 83 App.Div. 150, 82 N.Y.S.543. (#279-208)

Even though the defendant Mr Graver did admit in his affirmation in support of motion to dismiss that, "the only factual allegation that appear tobe relevant to a claim Ally thinks she has against me is her allegation that I wrongfully prepared an execution which led to her eviction from the premises," yet, the order dated Novem ber 19,1997 said: Upon the foregoing papers it is ordered that this motion is granted, and the complaint is dismissed, and the cross-motion is denied. The parties are directed to appear before the court on December 18, 1997 at 9.30 am for a hearing on the issue of sanctions. This action concerns an ejection action commen -ced in 1991 by the defendants Kishore and Palmour against the present plaintiffs. The movant, the defendant Graver,was the attorney for Kishore and Palmour in that action, which resulted in 1994 in a interlocutory judgment of ejectment in favor of Kishore and Palmour and against the present plaintiffs. A counter-claim asserted by the present plaintiffs for wrongful eviction was dismissed. The present plaintiffs then commenced two separate actions in 1995, claiming damages for wrongful eviction. These were consoli dated, and dismissed by theHon.Herbert A. Posner, with prejudice, on May 28,1997on the grounds that the plaintiffs had failed to com ply with orders to disclose,and that they persisted in making"merit less and incomprehensible motions." This action is essentially identical with the actions which were consolidated and dismissed with prejudice by Justice Posner. The plaintiffs are bound by that decision, and cannot seek to circumvent it by bringing yet another action. Even if they were not so bound, this claim is barred by the 1994 judgment. Even if they were not precluded by that judgment, this claim, as against the movant, is clearly meritless,as it is settled that an attorney may not be held liable to a third party for acts done in the course of his representation of a client, in the absence of fraud, collusion or a malicious or tortious act (Michalic by Nakouics v Klat, 128 AD 2d 505; Viscardi v Lerner, 125 AD 2d 662). Since this is at least the third in a succession of repetitive, meritless applications and lawsuits, sanctions appear to be warrant-ed.(R#309). At common law a dismissal on ground other than mer-its would not constitute res judicata in later case. Madden v Perry,

C.A. 111. 1959, 264 F.2d 169, certiorari denied 79 S. Ct.1459, 360 U.S 931, 3L. Ed.2d 1544.

At the hearing on December 18, 1997. The Court asked the defendant Graver as follows: "Mr Graver was the attorney for Kishore and Palmour in that action which resulted in a 1994 interlocutory judgment of ejection in favor of Kishore and Palmour against Ackleema Ally; is that correct?" Mr. Graver said, "Yes, it is." The Court also said, "Ms. Ally commenced afterwards two separate actions in 1995 claiming damages for wrongful eviction. These were consolidated and dismissed by Honorable Herbert A. Posner with prejudice on May 28, 1997, on the grounds that the plaintiffs had failed to comply with the orders to disclose and that they persisted in making meritless and incomprehensible motions. Did Judge Posner do that?" Mr Graver answered, "Yes, Sir" The Court then asked, "Were you forced to defend that, sir?" Were you forced to defend it, oppose the motion?" Mr. Graver answered, "No, I was not the attorney on the motion." Plaintiff Ally said to the Court, "Your Honor, on you order, it stated that this action is essentially identical with the actions which were consolidated and dismissed with prejudice by Hon. Justice Posner. "before the plaintiff could continue, the Court said, "You know what with prejudice means? With prejudice means you cannot bring another action, and that was dismissed with prejudice."Ally then said, "But, your Honor, Justice Posner did not tell me I cannot make another claim against the defendant." The Court said, "Yes, he did.Yes, he did. When he said with prejudice, that means this is the end."Ally then said," But your Honor, that prejudice was not on the merits. It was because I did not produce my interrogatories. It was not on the merits of the case." The Court then said, "Madame, if you had, if you had any grievance because the action was dismissed against you because you failed to disclose and the matter was dismissed with prejudice by Justice Posner, your remedy was not to bring another action; your remedy was to taken an appeal, which you didn't do. Instead, you bothered this lawyer by bringing an action against him." Ally then said, Your Honor, he was not included on the other actions. This is the first action against him, he was never included." The Court said, "He was not a defendant?" Ally said, "No." Ally also said, "Here is an order, your Honor, which was signed by Hon.

Justice Lane, On this order---." The Court then said, "Let me see it."Ally then continued, "On this order,Mr Graver's name is not as a defendant. That was the consolidated order of two actions. He was never a defendant in any of the actions." The Court then said, "But don't you understand? You're suing him because he represented Ms. Kishore, correct?" Ally then said, "No, your Honor I'm suing him because he executed, he wrote up an execution ordering the sheriff to evict me, and he did not get a warrant from the Judge to do so, your Honor, that is the reason why I'm suing him, on account of his actions. Ally said, "Here is the execution," Ally also said, "The dismissal of the case was not on the merits, your Honor.

The Court said, "Ma'am, I heard everything I had to hear. You're telling me,you're telling me that you lost,but you lost unjustifiably and you want to bring an action against him-."Ally then said,"But, your Honor, pursuant to the CPLR, a warrant cannot be issued by an attorney, only by a Judge, but this attorney took it in his hands to make an execution order, give it to the sheriff. How do I know he's not involved in removing my stuff from the store?" The order after the hearing said: "It is ordered that the defendant Graver shall recover of the plaintiff Ally the sum of$2,500 for costs pursuant to 22NYCRR 130-1.1."the Court continued to say, "The Court determined that the plaintiff was guilty of frivolous conduct in commencing this action, in that the action was completely without merit, and could not be supported by a reasonable argument for an extension, modification or reversal of existing law; and in that it was undertaken primarily to harass the defendants." The Court continued,"The plaintiff Ally was given an opportunity at the hearing of December 18, 1997, to explain or justify her conduct, and could not do so, beyond restating her grievance. That grievance is meritless as a matter of law."

The Court's order continued: "Even if they were not precluded by that judgment,this claim, as against the movant,is clearly meritless,as it is settled that an attorney may not be held liable to a third party for acts done in the course of his representation of a client, in the absence of fraud, collusion or a malicious or tortious act ." (R#311) Because the plaintiff's complaint was dismissed and the

cross-motion was denied on account of the above verse, and the above verse was not a ground for dismissal, the plaintiff Ally then made a motion torenew her cross-motion for summary judgment on the grounds of additional facts and Laws not previously considered in this action, in which plaintiff said that this action is a joint cause of action and the defendant (Graver) did not make a motion to have causes separately stated, therefore he did not fuse his respective claim, and that the presence of fraud, collusion, malicious and tortious acts can clearly be seen, since the said defendant's actions are not only the existence of actionable wrong but the wrong caused damages. Plaintiff Ally continued to say that the elements of fraud in an action include false representation of a present or past fact and collusion is an agreement between two or more persons to defraud a person of his rights by the forms of Law, or to obtain an object forbidden by law, it implies fraud of some kind. (R#313).

Plaintiff argued in her sworn affidavit in support of her motion to Renew that, pursuant to CPLR 1002, complaint stating a separate cause of action against one defendant and a separate cause against another was not dismissedon defendant's motion to dismiss,but pro per motion should have been to have causes separately stated. Trilliard v Horowitz 1955, 1 A.D. 2d 680, 146 N.Y.S. 2d 512. Plaintiff Ally argued in her motion to renew,that pursuant to CPLR 1502, In order to charge the sole property of those joint obligators who were named but not served in the first action, a new action must be commenced within six years from the entry of judgment in the first action. Hofferberth v Nash 1908, 191 N.Y.446, 84 N.E.400. In the second action the first judgment is not res judicata, since this section mandates that the second action proceed as though the first one had not been brought. Ally continued to say: The elements of Fraud in an action, which include false representation of a present or past fact made by defendant, action in reliance there upon by plaintiff and damages resulting to plaintiff from such representation. Citizens Standard Life Ins., Co. v Gilley, Tex. Civ. App. 521 S. W.2d 354,356. Ally also say, Collusion is an agreement between two or more persons to defraud a person of his rights by the forms of law or to obtain an object forbidden by law. It implies the existence of fraud of some kind, the employment of fraudulent means, or of law

ful means for the accomplishment of an unlawful purpose. Tomiyo su v Golden, 81 Nev, 140 P.2d.415, 417, and the plaintiff Ally do beieve that the defendants did use the forms of law to destroy her business and all the contents of the said business premises, which include all of her household and personal property. Plaintiff Ally then said that, malicious is a wrongful act intentionally done with out legal justification or excuse, an unlawful act done willfully or purposely to injure another. Ally then said, tortious is used to denote the actor such a character as to subject the actor to liability, under the principles of the law of torts.

The order ofthe Court said, "Upon the foregoing papers itis order ed that this motion is deemed a motion to reargue, and is denied. The Court has already imposed sanctions on the plaintiff for frivolous conduct in this action. This motion is yet another frivolous act by a litigant who refuses to accept the determination of the Court. Accordingly, the plaintiff Ackleema Ally is directed to appear before the court on April 29, 1999 to show cause why further sanctions should not be imposed." (R#322) The plaintiff also made a motion to stay the execution of the order that granted costs and attorney's fees to Mr. Graver, but the motion was denied and the plaintiff Ally was directed to appear before the Court on April 29, 1999 to show cause why further sanctions should not be imposed. The lower Court gave the City Sheriffs at least four (4) extensions of time to answer plaintiff's verified complaint and still they did not answer the verified complaint.The first was given up to Decem ber 8, 1997, even though their papers were filed after the date requested by the summons, also, they did not serve any motion pa pers to the plaintiff when they requested that extension, plaintiff found the order and the motion papers in the file in the Court Records Office, after the extension was granted. (R#323). Plaintiff reply in opposition and she said, that pursuant toCPLR 2004:- An application for an extension of time to answer must be made prior to the expiration of the original time to answer. Keith v New York State Teachers Retirement System (3rd Dept.,1977)56 A.D.2d 671, 391 N.Y.S. 2d 479. Plaintiff Ally also said, plaintiff's letter to defendant received by defendant when he was in default could not have extended defendant's time to move or answer where defen-

dant's time to do so expired. Conklin v Wilbur(2nd Dept., 1966) 26 A.D. 2d 666, 272 N.Y.S 2d.793.

Two more motion was granted to the City Sheriffs and the two orders dated November 23, 1998, both orders said, "It is ordered that this motion is granted, only to the extent that the action is dismissed. As noted in the order of November 19, 1997,dismissing the action as against the defendant Graver,and in the order of even date herewith, imposing costs and attorney's fees against the plaintiff Ally and in favor of the defendant Graver, this action is essentially duplicative of two prior actions which were consolidated and dismissed by order of Justice Posner. That conclusion is not changed by the fact that the plaintiff has now chosen to sue the public officers who carried out the court's mandate,rather than the persons in whose favor that mandate was granted. (R#325 &326) The City Sheriffs knew at all times that the execution was written by the defendant Mr Graver and it is not a mandate from the Court, and the evidence was produced to the Court, which proves that the New York City Sheriffs did not carry out the mandate of the court but the mandate of an attorney.The return date for the motion to renew plaintiff's cross-motion for summary judgment on the grounds of additional facts and laws not previously considered was on February 16, 1999, but Ms Cruise, the City Sheriffs attorney, turned up in court andasked for an extension of time to answer plaintiff's veri fied complaint, and again the lower Court granted the extension to March 9, 1999.

Plaintiff Ally said, Pursuant to CPLR 3215, in view of record reflecting continuous pattern of default and neglect, court could not exercise discretion to excuse defendants's failure toappear in oppor sition to plaintiff's motion for summary judgment, and, accordingly it was abuse of discretion as matter of law to afford defendant still another opportunity to appear in opposition. Salvagne v Trans. America Ins. Co., 1983, 93 A.D.2d 761, 461 N.Y.S. 2d. 321. Pursuant to FRCP 28 Rule 8: Defendant's failure to deny allegations alleged in plaintiff's complaint constituted an admission ofthe facts alleged. McComb v Blue Star Auto Stores C.S.Ill. 1947,164 F.2d. The motion to renew the cross-motion was against Mr Graver but

the lower Court allowed the City Sheriffs to answer the motion even though the plaintiff Ally asked the Court to reject their answer, because the record is reflecting continuous pattern of default and neglect which is prejudiced to the plaintiff,but the lower Court still allowed the City Sheriffs attorney to appear in Court in opposition on April 29, 1999 and then the lower Court signed a memorandum dated April 30, 1999 and sanctioned the appellant $5,000 on account of the motion brought against the City Sheriffs. The attorney defendant Mr Graver did not appear, but was awarded $5,000 for costs and attorney's fees on account of the plaintiffs' frivolous action within the meaning of #130-1.1, which is the total of $10,000 in sanctions.

The memorandum said: The court had directed the plaintiff, Ackleema Ally,to appear before it to show cause why further sanctions should not be imposed. Heretofore, the court found that this plaintiff had engaged in fruitless, vexatious, frivolous litigation which could only be designed to annoy the defendants. Her claims have already been dismissed. By order dated November 23, 1998, and following a hearing, the court imposed counsel fees on her in the amount of $2,500 payable to the defendant Graver. Apparently, Mrs Ally has not been impressed by that sanction. The Court continued: At the hearing, the court gave the plaintiff the opportunity of making some amends for her persistence in this fruitless litigation. Instead, she attempted to justify her position with the same arguments that the Court has rejected so many times before. She has never chosen to appeal the court's decision, but rather seeks to wear the defendants down with a multiplicity of her repeated arguments. She had not learned that she must quit. The Court Continued: She has, here, moved to stay execution of the prior orders of the court, based upon no new evidence or arguments, but merely restating the arguments which have already been rejected more than once. This conduct is completely without merit in law, and was undertaken primarily to delay or prolong the resolution of this litigation, and to harass the defendants. She has continued this conduct long after the lack of its legal and factual basis became apparent and was brought to Ms Ally's attention. Her conduct is, therefore, frivolous within the meaning of #130-1.1 of the Rules

of the Chief Administrator of the Courts. Accordingly, the court must sanction her again. This time the sanctions will be a judgment of this court and thus may be collectable. The court orders that the plaintiff pay costs and sanctions in the total amount of $10,000. $5,000 of this shall be costs, including attorney's fees, payable to Richard S. Graver. $5,000 shall be sanctions, on account of the motion as against the defendant City Sheriffs and on whose behalf the City of New York was compelled to defend. The sanction shall be deposited with the clerk of the court for transmittal to the Commissioner of Taxation and Finance. Settle order. (R#327). A proposed Judgment dated August 19, 1999 by plaintiff Ally, was then signed(R#329).

Pursuant toFRCP 28-Rule8:Court has duty to assistpro-se litigant who may not understand concepts of legal responsibility, and thus court would construe plaintiff's complaint to have included state ment of claim based on theory of negligence through plaintiff submitted that defendant intentionally deprived plaintiff of property which he left behind when he escaped. Frazier v Collins, D.C.Va, 1982, 538 F.Supp. 603. Amendment 14#1 said: "The first prerequisite to raising due process argument is that action complained of must constitute "State" action and the state action must result in a "deprivation"of complainant's interest, and such interest must be a "property" interest within meaning of due process clause, and finally, if state action deprives one of property interest, court must balance various interests at stake in order to determine the procedural due process which is constitutionally required under circumstances. Pitsenberger v Pitsenberger, 1980, 410 A. 2d 1052, 287 MD.20.

Amendment 14#1 said:"Rights of individual or corporation not to be deprived of property without due process is" right secured by Constitution"within28U.S.C.A.#1343 giving district courts original jurisdiction of civil actions authorized by law to be commenced by persons to redress deprivations under color of any state law or any right secured by the constitution. Joe Louis Milk Co.,v Hershey, D. C.Ill.1965, 243.F.Supp. 351. Amendment 14#1 said: "State Courts bear equal responsibility with Federal Courts to guard and protect rights secured by Constitution of the United States." Horn v O'

Cheskey, D.C. N.M. 1974, 378 F. Supp. 1280. Amendment 14#1 said:Constitution of the United States, rather than state law,defines what process is due once the deprivation of property or liberty had been demonstrated. Bagly v Beal D.C.Pa.1977, 439 F. Supp.1257. Constitution Art 1#7 said: Due process of law coupled with require -ment of just compensation, for appropriation of property, requires that aggrieved person be given notice of and opportunity to be heard on compensation. Zember v State, 1957, 5 Misc.2d 216,160 N.Y.S. 2d 510.

Amendment 14#1 said: The concept of equal protection ofthe laws and due process both stem from the American ideal of fairness, and are not mutually exclusive, nor are the concept always interchangeable, in that equal protection of the laws is a more explicit safeguard of prohibited unfairness than due process of law, but a discrimination may nevertheless be so unjustifiable as to be violative of due process. Bolling v Sharpe,App.D.C.1954,74 S.Ct. 693, 347 U.S. 497. 98 L. Ed. 884. Amendment 14#1 said: Under this Amendment and Amendment 5,both federal and state governments are prohibited from arbitrarily denying any citizen equal rights under the law. McLaughlin v Great Lakes Fredge and Doch Co., D.C. Ohio 1980, 495 F Supp. Constitution Art 1#7: The ultimate responsibility for protection of private property rights lies with the Courts, and the Courts have a duty to do more than defer to the legislative. Wolfe v State, 1967,53 Misc. 2d 14,277,N.Y.S. 2d. 986 Constitution Art 1#7 said: "Just Compensation,"comprehends all elements of damage to an owner by appropriation of his property, and, when those elements have been given their proper weight, what is arrived at is a single sum of money which is compensation for the property right taken from the owner. In re Wacht's Estate, 1942,32 N.Y.S. 2d 871.

APPEAL AND ORDER FROM THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT

A proposed signed Judgment dated August 19, 1999, (R#329) for some reason could not be found in the Court,however, when it was

found, the plaintiff served and filed a Notice of Appeal dated December 15, 2000.(R#332). A order was signed and entered in the Appellate Court which said, "In an action to recover damages for wrongful eviction, the plaintiff appeals from a judgment of the Supreme Court, Queens County (Lonchein, J.) dated August 19, 1999, which, after a hearing, imposed a sanction upon her in the sum of $10,000 for frivolous conduct. ORDERED, that the judgment is affirmed, with costs Although a jury found that the plaintiff was not wrongfully evicted, and a court previously dismissed two prior actions by the plaintiff seeking damages arising out of the eviction, the plaintiff commenced this action for the same relief. Under the circumstances, the Supreme Court providently exercised its discretion in imposing a sanction upon the plaintiff for engaging in frivolous conduct (see 22 NYCRR 130-1.1 (c); Gache v Town Village of Harrison,251AD2d 624; Janitschek v Trustees of Friends World Coll. 249 AD 2d 368; Murray v National Broadcasting Co., 217AD 2d 651. The plaintiff's remaining contentions are not properly before this court on this
Appeal. Altman, JP., Smith, McGinity and Townes, JJ., Concur.

ENTER. (R#333).

APPEAL AND ORDER FROM THE COURT OF APPEALS, STATE OF NEW YORK

The plaintiff Ally thenfiled a notice of appeal as of right, in the State of New York, Court of Appeals as follows: Please Take Notice, that the above named pro-se plaintiff-appellant,Ackleema Ally hereby appeals to the Court ofAppeals, State of New York from the order as final judgment under CPLR 5501(a) entered February 18, 2003 of the Honorable J.P. Altman, Smith, McGinity and Townes, JJ.,concur. Justices of the Supreme Court of the State of New York, Appellate Division, Second Department in the proceeding herein, and which order affirmed the judgment with Costs(Index No.23514 /97) of the Supreme Court of the State of New York, Queens County, and pursuant to CPLR 5501(a)(1)(2)(3)(4) that the judgment of (Index No.23514/97) entered August 26, 1999, and all orders in

this action of the Honorable Arthur W. Lonschein, Justice of the Supreme Court of the State of New York, Queens County, that the interlocutory judgment (Index#5610/91)entered July 15, 1994, and all orders in this action of the Hon. Herbert A.Posner,Justice of the Supreme Court of the State of New York, Queens County, that the order entered December 2, 1996(Index No.23087/95) of the Honor able Justice Joseph M. Lane, Justice of the Supreme Court of the State of New York Queens County, that all orders entered in the Actions(Index#21625/95 & #23087/95)of the Hon. Justice Herbert A. Posner, Justice of the Supreme Court of the State of New York, Queens County, that the order dated May 5, 1995 of Justice F Schmidt,Justice of the Landlord and Tenant Court, Queens County, that the order dated June 12,1995of Justice Bernard S. Greenbaum, Justice of the Landlord and Tenant Court, Queens County, and that all orders in this action and the previous actions be reviewed by this Court on the grounds of the merits of the facts, and the evi-dence, the law, the Constitutional right, the Constitutional protect-tions, the Constitutional liberty and freedom, together with protect tion under due process law clause of the 4th, 5th, and 14th Amend ment rights of the appellant, and from each and every part thereof, of the said order as final judgment, Judgment, interlocutory, judg ment, and all orders from the actions, Starting from the action Index No. 5610/91 to the final action Index No.23514/95 as a Whole thereof. (R#334). The order from the Court of Appeals are as follows: The appellant having filed notice of appeal in the above title and due consideration having been there upon had, it is Ordered, that the appeal be and the same hereby is dismissed with out costs, by the Court sua sponte, upon the ground that no sub stantial constitutional question is directly involved. This order was signed by Mr. Stuart M. Cohen, Clerk of the Court. (R#336). A motion for permission to appeal to the Court of Appeals dated July 3, 2003 was filed in the State of New York Court of Appeals on the grounds as follows: "Please Take Notice,that upon the copy of records, briefs and oral argument that is already filed in this Court and upon the annexed sworn affidavit with exhibits as evi dence of Ackleema Ally the above named pro-se plaintiff-appel lant, dated July 3, 2003, and upon all pleadings and proceedings heretofore had herein the pro-se plaintiff-appellant Ally will move

this Court, at Court of Appeals Hall, of this Court to beheld at the courthouse thereof located at 20 Eagle Street, Albany, New York, on the 18th day of July, 2003 at 9.30 o'clock in the forenoon of the day or as soon there after as pro-se plaintiff - appellant Ackleema Ally can be heard for an order granting her permission to appeal by this motion, from the order as final judgment under CPLR 5501 (a) entered February 18, 2003, of the Honorable J.P. Altman, Smith, McGinity and Townes, JJ., concur. Justices of the Supreme Court of the State of New York, Appellate Division, Second De partment in the proceeding herein, and this order affirmed the judg ment with Costs of Index No. 23514/97 of the Supreme Court of the State of New York, Queens County, the said order was mail ed to me by the opposing party with notice of entry on March 26, 2003, and pursuant to CPLR 5501(a)(1)(2)(3)(4) that the judgment of Index #23514/97 entered August 26, 1999, and all orders in this action of the Honorable Arthur W. Lonschein, Justice of the Supreme Court of the State of New York, Queens County; that The interlocutory judgment Index No. 5610/91 entered July 15, 1994, and all orders in the said action Index No. 5610/91 of the Hon. Herbert A. Posner, Justice of the Supreme Court of the State of New York, Queens County; that the order entered December 2, 1996 Index No.23087/95 of the Honorable Justice Joseph M. Lane, Justice of the Supreme Court of the State of New York, Queens County; that all orders entered in the actions Index No. 21625/95 & 23087/95 of the Honorable Justice Herbert Posner, Justice of the Supreme Court of the State of New York, Queens County; that the order dated May 5, 1995 of Justice F Schmidt, Justice of the Land lord and Tenant Court, Queens County; that the order dated June 12, 1995 of Justice Bernard S. Greenbaum, Justice of the Land lord and Tenant Court, Queens County; and that all orders in this action and the previous actions be reviewed by this Court on the grounds of the merits of the facts, and the evidence, the law, the Constitutional right, the Constitutional protections, the Constitution -al liberty and freedom, together with protection under due process law clause of the 4th, 5th, and 14th Amendment rights of the appel- lant, and from each and every part thereof, of the said order as final judgment, Judgment,interlocutory judgment and all orders from the actions, starting from the action Index#5610/91 to the final action

Index#23514/95 as a whole thereof, and for such other and further relief as this Court deems just and proper. The prose plaintiff-appellant did file a Notice of Appeal as of right to this Court,dated April 24, 2003,which was dismissed without costs on June 12,2003 upon the ground that no substantial constitutional question is directly involved, the said order with notice of entry was mailed to plaintiff-appellant on June 23, 2003, by the opposing party. The Court of Appeals has jurisdiction to review this order because (1). Even though I respect the Lower Court, and the Appellate Court's decision, but, I do believe that the Appellate Ceurt did violate the plaintiff-appellant's individual right and liberties ofthe Constitution and the Bill of Rights,when they affirmed the lower Court's ruling and

upheld the State Law against her claim when they made their final decision on an interlocutory judgment and not on a final judgment. (2). I also believe that the Appellate Court did violate the due process Clause of the 4th, 5th and 14thAmendment rights of the plaintiff-appellant when they affirmed the ruling of the lower Court with costs on an interlocutory judgment and not on a final judgment and (3). The 14th Amendment of the U. S. Constitution said, "that No State shall deny to any person within Its jurisdiction the equal protection of the laws." The Court of Appeals should accept this case for review because,(1).I do believe that the plaintiff-appellant does have the due process rights in every aspect of the law. (2). The ruling of the Lower Court and the Appellate Court is prejudiced to the plaintiff-appellant, since they made their ruling on an interlocutory judgment and not on a final judgment.(3).The attorney defendant did admit that he wrongfully made the execution which caused the eviction of the plaintiff-appellant, and the City Sheriffs did admit that they evicted the plaintiff-appellant, and they also made a false representation when they said that the judgment was a final judgment and that the Supreme Court has issued an order for the plaintiff-appellant's eviction, but the judgment was only an interlocutory judgment and not a final judgment and the Supreme Court did not issue a order for the eviction, so the defendants did not only intrude or trespass and illegally evicted the plaintiff- appellant, but they also destroyed her business and robbed her of the contents of the said business premises,including her household and

personal property, yet, the Lower Court sanctioned the plaintiff-ap pellant for frivolous action, and the Appellate Court affirmed the judgment with costs, when they made the final decision in this action.

Plaintiff-appellant do believe that damaging another person's pro perty is against the law, and property damage is a civil tort. So I do believe that the Court of Appeals should accept this case for re-view. (R#337). The sworn affidavit which was attached to the plaintiff Ally's notice of motion to the Court of Appeals, summar ized the background facts andthe procedural history of this action, and since the plaintiff did asked the Court of Appeals to review the interlocutory judgment and all orders pursuant to CPLR5501 (a)(1)(2)(3)(4) she produced the forged lease and the deposition as evidence of the facts of the deposition of Nazmoon Hassan(original landlord) which her attorney did not produce at the trial, which may have changed the verdict in the interlocutory judgment. All the necessary documents andsworn affidavits were produced to support the motion for permission to appeal before the Court of Appeals,but a order was signed by Mr Stuart M. Cohen, the Clerk of the Court which said as follows: A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted there on and due deliberation having been thereupon had, it is Ordered, that the said motion be and the same hereby is denied. (R#383).

Constitutional Amendment 14#1 said: "Substantive due process" means that state action, which deprives person of life,liberty or pro-perty, must have a rational basis, that reason for deprivation may not be so inadequate that it would be characterized as arbitrary. Jeffries v Turkey Run Consol.School Dist.,C.A.Ind.1974, 492F.2d1 The makers ofour constitution undertook to secure conditions favor able to the pursuit of happiness. To protect that right, every unjus-tifiable intrusion upon the privacy of the individual whatever the means employed must be deemed a violation of the 4th Amendment, and the use, as evidence in a criminal proceeding, of facts ascertain ed by such intrusion must be deemed a violation of the 5th Amendment.

The 4th Amendment protects people not places, what a person knowingly exposes to the public,even in his own home or office, is not a subject of 4th Amendment protection, but what he seekto preserve as private,even in an area accessible tothe public,may be con stitutionally protected. Constitutional Amendment IV said: The right of the people to be secure in their persons,houses, papers, and effects, against unreasonable searches and seizures,shall not be vio lated, and no warrants shall issue,but upon probable cause,support-ed by Oath or Affirmation, and particularly describing the place to searched, and the persons or things to be seized. Justice Samuel Chase wrote: "The people of the United States erected their constitutions or forms of government to establish justice, to promote the general welfare, to secure the blessings of liberty and to protect their persons and property from violence." I do believe that the constitutional protection in the right to liberty is entailed by the due process and that the due process clause afforded access to the Courts for the protection of those rights, I also believe that any one excluded by state law violates equal protection, however the denial of equal justice I believe is still within the prohibition of the Constitution, as Justice Powell stressed that equal protection is a personal right of an individual to be judged on the basis of individual worth and merit. In Campbell v Morris (1797) Justice Samuel Chase also stated on behalf of the Maryland Court that the Court areof the opinion that the privileges or immunities in the 14th Amendment means the peculiar advantages of acquiring and hold ing real as well as personal property, that such property shall be protected and secured by the laws of the state, in the same manner as the property of the citizens of the state is protected. Many people believe that the provision of the 5th Amendment refers to eminent domain but the Constitution did not specifically say real property Ally believe it also refers to the private property, or personal property which belongs only to that person and cannot be used by anyone in the public without the authorization of the per son to whom it belongs. The 4thAmendment protects the rights of the people against unreasonable searches and seizures, in this action there was no warrant for the seizure of my property, but they were seized, and there was no probable cause for the unreasonable seizure of my property, since, the judgment of the New

York State Supreme Court, County of Queens was only an inter locutory judgment and not a final judgment, and a warrant is equivalent of execution and cannot be issued until a final order is made in favor of landlord, see Greenberg v Cagle 1961, 212 NYS 2d 767, but there was no warrant issued, therefore I do believe that that was intrusions on individual liberty, and private ownership is an important individual liberty.

Section 1 of the 14th Amendment contains 3 prohibitions on the States: All persons born or naturalized in the United States and of subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. (1). No State shall make or enforce any law which abridge the privileges or immunities of citi zens of the United States. (2). Nor shall any State deprive any person of life, liberty or property without due process of law. (3). Nor deny to any person within its jurisdiction the equal protection of the laws.

The fundamental maxims of a free government seem to require That the rights of personal liberty and private property should be held sacred. Wilkinson v Leland (1829). Pursuant to 28#1331: Where there is nodiversity of citizenship between parties in Federal Court, a right or immunity created by Federal Constitution laws of United States must be an essential element of plaintiff's cause of action. Campo v Niemeyer, C.A. Ill. 1950, 182 F. 2d. 115. See, also, Ehn v Price, D.C. Ill. 1974, 372 F. Supp. 151. Plaintiff Ally believes that this Court do have subject matter jurisdiction over her action since some of the important examples of Art.111subject matter jurisdiction are cases arising under the Constitution, and federal question jurisdiction.

VERIFIED COMPLAINT DOCKET NO. CV-03-5380 WAS FILED IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

A verified complaint was then filed in the United States District Court, Eastern District of New York Index CV 03 5380 on October 24, 2003(R#385) by the plaintiff Ackleema Ally but this action was

dismissed byMemorandum andjudgment of Hon.Judge Nina which said: Pursuant to Order issued Nov.24,2003 by the Honorable Nina Gershon, United States District Judge,dismissing the complaint for lack of subject matter jurisdiction, it is, Ordered, Adjudged And Decreed : That the complaint is hereby dismissed. The Court certifies,pursuant to 28 U.S.C #1915(a)(3)that any appeal from the Court's order would not be taken in good faith.(R#401-404).

APPEAL AND ORDER FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND SERCUIT

A Notice of Appeal was then filed in the United States Court of Appeals for the Second Circuit Docket# 04- 0665-cv on December 22, 2003. (R#411) The plaintiff-appellant Ally then filed her Brief and records on Appeal, but received no answer to her brief, she then appeared at the Thurgood Marshall United States Courthouse at 40 Foley Square, New York City for a hearing, after the hear ing an Amended Summary order was filed on April 19, 2005 and the Order said: Upon Due Consideration, It Is Hereby Ordered, Adjudged And Decreed that the judgment of the district court be, and it hereby is, affirmed. Unfortunately not until after reading the Amended Summary Order of the United States Court of Appeals, did the plaintiff Ally realized that she wrote violation of Section 853 of the Real Property Actions and Proceedings Law on her papers when her actions are tort and contract actions, and even the action 5610/91 is not a landlord and tenant action because there was no landlord and tenant relationship between the new owners and the plaintiff Ally in 1991, they never accepted her rent until 1993, and even after that they again refused to accept her rent, and that action was filed as contract and ejection action.

Upon information and belief up to this date June 16, 2005 there is still no final judgment on that action Index #5610/91 between the plaintiff Ally and the defendants Kishore and Palmour. By reason of the foregoing the plaintiff Ackleema Ally is respectfully request ing that this Court rehear her case, because the plaintiff believes that all the defendants are the fruit of a willful, illegal, collusion,

intentional, conversion, burglary, deliberate, forcibly entry, trespass, negligent, destruction, fraudulent,malicious and tortious acts, unreasonable searches and seizures, violation of plaintiff Ally's 14th Amendment Constitutional Rights, Violation of the Bill of Rights,Violation of the 4th Amendment and the 5th Amendment, the Taking Clause, plaintiff was denied her right to due process of the laws, since due process applies because of its demand for a fair opportunity to obtain an adjudication on the merits, plaintiff was denied of the opportunity to be heard of the substantive due process, which is the basic law of rights and duties in a tort and con tract action, plaintiff was denied the equal protection of the laws accorded her by the 14thAmendment of the Constitution of the Unit -ed States, which not only deprived her of her right to operate her business but which result in ataking of her liberty and property with out just compensation, the obligation of her contract was also impaired, since it is the issuing of the warrant that cancels the lease and not the execution and for which the business suffered and substantially diminished to the point where the plaintiff was effect tively put out of business by the seizure of her business premises, and the destruction and removal of all the contents of the said busi ness premises which include all of her household and personal property, all the stocks, the equipments, the machinery, fixtures and fittings and many, many more by the said defendants and especially since no notice of the seizure was served on her, and no warrant was issued by the Court for the seizure of her business premis es and its contents..

By reason of the foregoing the plaintiff Ally have also been furth -er harmed and damaged in that she have sustained extreme emo tional upset, and distress, in seeing her personal and household be longings and contents/possession of the business premises being willfully, intentional, illegal, maliciously, and tortiously destroyed and removed, financial business loss, loss of income, and as other wise been substantially and irrevocably harmed and damaged by reason of the loss of very important documents andof future income from the subject business premises. By reason of the foregoing the plaintiff Ally have sustained damages in the sum of $10,000,000. (Ten Million Dollars) and thereby demands treble damages totall-

ing the sum of $30,000,000. (Thirty Million Dollars) by reason of the willful, illegal, intentional,collusion, conversion, negligent, bur glary, deliberate, forcibly entry, trespass, destruction, fraudulent, malicious and tortious acts,unreasonable searches and seizures,violation of plaintiff Ally's 14th Amendment Constitutional Rights, Violation of the Bill of Rights,Violation of the 4th Amendment and the 5th Amendment, the Taking Clause, Violation of the plaintiff's rights under the due process clause, substantive due process and violation of the plaintiff's equal protection rights, the said defend ants also impair the obligation of her contract, and her property was taken without just compensation etc., and further demands Punitive damages and fees to be assessed by this Court, together with costs and disbursement of this proceeding and interest thereon and for such other and further relief as this Court deems just and proper.

Dated: June 16, 2005

Ackleema Ally
pro-se plaintiff

APPENDIX F

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

[Filed Sep. 21,2005]

No. 04-0665-cv

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff-Appellant

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants-Appellees

ORDER

Before FEINBERG, SACK, KATZMANN, Circuit Judges.

A petition for panel rehearing and a petition for rehearing en banc having been filed herein by the appellant Ackleema Ally.Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is Denied.

It is further noted that the petition for rehearing en banc has been

transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

Entered for the Court
Roseann B. MacKechnie, Clerk

By: [Illegible]
Motion Staff Attorney

APPENDIX G

Supremacy Clause Article VI & III

(1). The Supremacy Clause in Article VI of the U. S. Constitution which declares that, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the Contrary not withstanding. Article III of the Constitution it refers to cases that are heard before a court for the first time,Federal Question Jurisdiction.

28 U.S.C.# 1254 (1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1). By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2). By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

(3). Supreme Court granted government's petition for certiorari in order to consider constitutional issue of whether goldmine owners were deprived of their property without just compensation,contrary to U.S.C.A.Const.Amend.5, by War Production Board order directing closing of owners' mines. U.S. v Central Eureka Min .Co.1958, 78 S.Ct. 1097, 357 U.S.155, 2 L.Ed.2d 1228.

(4). Certiorari would be granted to consider whether arailroad could escape liability under # 51 et seq of Title 45, by proving that an

injured employee obtained his job by making false representations upon which railroad rightfully relied in hiring him. Still v Norfolk v. W.Ry. Co.W.Va.Co., W.Va.1961, 82 S.Ct. 148, 368US.35.7L. Ed. 2d 103.

(5). Standard of review under equal protection rationality analysis, without regard to which branch of state government has made the legislative judgment, is governed by federal constitutional law, and a state court's application of that standard is fully reviewable in the Supreme Court I n writ of certiorari. Minnesota v Clover Leaf Creamery Co., Minn.1981, 101 St. Ct. 715, 449 U.S. 456, 66 L. Ed. 2d 659.

28 U.S.C.# 1257

(1).Supreme Court of the United States is only federal court authorized to hear appeals from state courts. Elks Nat. Foundation v Weber, C.A.9.(Mont.)1991, 942 F.2d 1480.

(2). United States District Courts do not have jurisdiction over challenges to State Court decisions in particular cases arising out of judicial proceedings even if those challenges allege that state court's action was unconstitutional; review of those decisions may be had only in United States Supreme Court. District of Columbia Court of Appeals v Feldmanm Dist. Col.1083, 103 S.Ct.1303, 460 U.S.462, 75 L.Ed.2d 206.

(3). District Court did not have subject matter jurisdiction to conduct direct review of state court's application of rules and procedures in personal injury case, dispite claim that state court violated federally protected equal protection and due process rights by dismissing the case on " procedural" technicalities," the proper Court in which to obtain direct review of state court determinations is the United States Supreme Courts. Allah v Superior Court of State of Cal., Los Angeles County, C.A.9.(Cal.,) 1989, 871 F.2d 887.

(4). Pursuant to U.S.C. 28 #1257 (a): Final judgments or decrees

rendered by the highest court of a state in which a decision could behad.may be reviewed by the Supreme Court by writ of certiorari where validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States,or where any title, right, privelege, or immunity is specially set up or claimed under the Constitution or the treaties or Statutes of, or any commission held or authority exercised under, the United States.

Constitution

(50).The Constitution said: With respect of eviction proceeding tenant was entitled to protection of federally secured procedural due process an essential part of which was either actual notice there of or constructive notice reasonable calculated under all circumstan ces to apprise interested parties of pendency of action and afford them an opportunity to present their objections. Carrasco v Klein, D.C.N.Y. 1974, 381 F. Supp. 782.

14th Amendment Section 1.

(1). Section 1 of the 14th Amendment contains 3 prohibitions on the States: All persons born or naturalized in the United States and of subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. (1). No State shall make or en force any law which abridge the privileges or immunities ofcitizens of the United States. (2). Nor shall any State deprive any person of life, liberty or property without due process of law.(3).Nor deny to any person within its jurisdiction the equal protection of the laws.

(2). Amendment 14, Section 1 (equal protection) provides: All persons born or naturalized in the U.S. and subject to the jurisdiction thereof, are citizens of theU.S.and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the U. S. nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal

protection of the laws.

(3). The equality guaranteed by Amendment 14. Section 1(equal protection) is the equality of right and not of enjoyment ,and a law that confers equal rights on all citizens of state, or subjects them to equal burdens, is an equal law. Haden v Actken, 1952, 55 N.W.

(4). Pursuant to Amendment 14#1 West's F.S.A. #821. 18 which forbids one person or persons to trespass upon the property of an other with a malicious and mischievous intent. Adderley v State of Fla. Fla.1966, 87 S.Ct., 242, 385 U.S. 39, 17 L. Ed.2d 149.

(5). Amendment 14#1 said: "Rights of individual or corporation not to be deprived of property without due process is"right secured by Constitution" within 28U.S.C.A#1343 giving district courts original jurisdiction of civil actions authorized by law to be commenced by persons to redress deprivations under color of any state law or any right secured by the constitution.

(6). Amendment 14, Section 1 (equal protection) is not confined to the protection of citizens; these provisions are universal in their appiication to all persons within the territorial jurisdiction, with out regard to any difference of race, or color or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws. Yick Wo v Hopkins, Cal. 1886, 6 S. Ct. 1064, 118 U. S. 369, 30 L.Ed.220.

(7) Constitutional Amendment 14#1, Property Law: All forms of property are entitled to due process protections. Trapper Brown Const.Co.,Inc v Electromech Inc., D.C.N.H.1973,358 F.Supp.105.

(8). Pursuant to Amendment14#1:Ordinance providing that no person, without privilege to do so, shall recklessly enter or remain on land or premises of another. Davis v Johnson D.L. Ohio 1976, 424 F. Supp. 168.

(9).Pursuant to Amendment 14#1:Statute making a person guiltyof second-degree burglary ifhe enters or remains inan occupied structure with intent to commit any crime therein under circumstances not amounting to first-degree burglary.

(10).Constitutional Amendment 14#1said: Americans have consti tutional right to privacy which springs from several of the Bill of Rights Amendments and is incorporated in the due process clause 1978, 575 F.2d 1119.

(11).Constitutional Amendment 14#1said: Denial of due process is failure to observe that fundamental fairness essential to the con cept of Justice. Linden v Dickson,C.A.Cal.1961,287F. 2d 55.

(12).Constitutional Amendment 14#1 Property Law said: Although underlying substantive interest is created byan independent source such as state law, federal constitutional law determines whether that interest rises to the level of a legitimate claim of entitlement protected by this clause. Memphis Light, Gas and Water Division v Craft, Tenn. 1978, 98 S.Ct. 1554, 436 U.S.1, 56 L.Ed 2d.30.

(13).Amendment 14#1 said:"Right of action byone injured as result of negligence of another against the negligent party to recover dam ages sustained by reason of such injury is "property"within protection of this amendment. Martinez v Fox Valley Bus Lines, D.C.111 1936, 17 F.Supp. 576.

(14).Amendment 14#1said:"The first prerequisite to raising due pro cess argument is that action complained of must constitute "State" action and the state action must result in a "deprivation"of complainant's interest, and such interest must be a "property" interest with in meaning of due process clause, and finally, if state action deprives one of property interest, court must balance various interests at stake in order to determine the procedural due process which is con stitutionally required under circumstances. Pitsenberger v Pitsenber ger, 1980, 410 A.2d 1052, 287 MD.20.

(15).Amendment 14#1 said:"Rights of individual or corporation not to be deprived of property without due process is "right secured by Constitution"within28 U.S.C.A.#1343 giving district courts original jurisdiction of civil actions authorized by law to be commenced by persons to redress deprivations under color of any state law or any right secured by the constitution. Joe Louis Milk Co.,v Hershey

D. C.Ill.1965, 243.F.Supp.351

(16).Amendment 14#1 said:"State Courts bear equal responsibility with Federal Courts to guard and protect rights secured by Constitution of the United States." Horn v O'Cheskey, D. C. N. M. 974, 378 F. Supp. 1280.

(17). Amendment 14#1 said: Constitution of the United States, rather than state law, defines what process is due once the deprivation of property or liberty had been demonstrated. Bagly v Beal D.C. Pa. 1977, 439 F. Supp.1257.

(18).Amendment 14#1 said: The concept of equal protection of the laws and due process both stem from the American ideal of fairness , and are not mutually exclusive, nor are the concept always interchangeable, in that equal protection of the laws is a more explicit safeguard of prohibited unfairness than due process of law, but a discrimination may nevertheless be so unjustifiable as to be violative of due process. Bolling v Sharpe, App.D.C. 1954,74 S.Ct. 693, 347 U.S. 497. 98 L.Ed. 884.

(19).Amendment 14#1said: Under this Amendment and Amend ment 5, both federal and state governments are prohibited from arbitrarily denying any citizen equal rights under the law. Mc Laughlin v Great Lakes Fredge and Doch Co., D.C. Ohio 1980, 495 F Supp.

(20).Constitutional Amendment 14#1 said: "Substantive due process" means that state action, which deprives person of life, liberty or property, must have a rational basis, that reason for deprivation may notbe so inadequate thatit would be characterizedas arbitrary. Jeffries v Turkey Run Consol. School Dist., C.A. Ind. 1974,492 F. 2d 1.

(65). In Campbell v Morris (1797) Justice Samuel Chase also stated on behalf of the Maryland Court that the Court are of the opinion that the privileges or immunities in the 14th Amendment

means the peculiar advantages of acquiring and holding real as well as personal property, that such property shall be protected and secured by the laws of the state, in the same manner as the property of the citizens of the state is protected.

4th Amendment

(1).Amendment 4: State has obligation to insure that actions of it agencies do not deprive any person of equal protection of the law. U.S. v State of Tex., D.L.Tex. 1970, 321, Supp.1043.

(2).Amendment 4: An owner whose property is destroyed, as by flooding or otherwise, is entitled to compensation therefor,not only as to real property destroyed, but as to any personal property there on, because in either case there is a "Taking" for which this clause requires just compensation. Causby v U.S., Ct.Cl. 1948, 75 F.Supp. 262, 109 Ct.Cl.768.

(3).Amendment 4: Interest is an element of just compensation in eminent domain proceedings and, when private property is taken, interest is awarded. U.S. v. 1, 433. Acres if Land More or less, Montgomery County. Kan. D.C. Kan. 1967, 71 F.Supp. 854.

(4). Amendment 4: The guaranty of right of people to be secure against unreasonable searches and seizures, does not forbid all searches and seizures, but only those that are unlawful because not based upon probable cause. Flores v U.S., C.A.5 (Tex.) 1956, 234 F.2d 604.

(5).The right to privacy under Amendment 4 is guaranteed against State invasion by Amendment 14, and must be enforced by same exclusionary rule found in the Federal Courts. U.S. exrel De Forte v Mancusi, C.A.2 (N.Y) 1967 379 F.2d 897, certiorari granted.

(6).Right of privacy of Amendment 4 is enforceable against States through due process clause of Amendment 14. Berger v State of New York, U.S.N.Y. 1967, 87 S.Ct 1873, 388 U.S.41,18 L.Ed.2d 1040

(7).Amendment 4 is to be construed liberally in order to safeguard rights of individuals to privacy of their homes and their places of business as well. U.S. v Perez-Vega, D.C. Puerto Rico, 1966,250 F Supp. 429.

(8).Amendment 4,absent exigent circumstances, prohibit any intrusion upon a person's privacy without a prior judicial determination that the intrusion is justified. U.S. v Burch D.C. Del.1977, 432 F. Supp.961.

(9).The right to privacy under Amendment 4 is guaranteed against state invasion by this Amendment and must be enforced by same exclusionary rule found in the Federal Courts.U.S. Ex rel.De Forte v Mancusi,C.A.N.Y. 1967,379 F.2d 897, affirmed 88 S. Ct. 2120, 392 U.S. 364, 20 L.Ed 2d 1154.

(10).Constitutional Amendment 1V said:The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to searched, and the persons or things to be seized.

(11). The 4th Amendment protects people not places,what a person knowingly exposes to the public,even in his own home or office,is not a subject of 4th Amendment protection,but what he seek to preserve as private, even in an area accessible to the public, may be con-stitutionally protected.

5th Amendment

(1). The 5th Amendment said: Due process clause requires, at minimum, that government provide notice and some kind of hearing before deprivation of property interest; notice; notice provided must be reasonably certain to inform those affected and an oppor tunity to be heard must be given at meaningful time and in mean ingful manner.

Propert v District of Columbia, C.A.D.C. 1991, 948 F.2d 1327, 292 U.S. App.D.C. 219.

(2). Amendment V said: Leasehold interests are property interests protected by this Amendment. Devines v Maier,C.A,7(Wis.) 1981. 665F 2 138.

(3).The requirement in Amendment 5 of just compensation for taking of private property for public use applies to the States, and it is incorporated into the meaning of "due process,"required by this amendment. Foster v City of Detroit, Mich., D.C.Mich. 1966.

(4).Constitution said:"Takings clause of the 5th Amendment states that private property shall not be taken for public use without just compensation; this clause is made applicable to the states through the due process clause of the 14th Amendment. 219 South Atlantic Blvd., Inc v City of Ft.Lauderdale,Fla., S.D. Fla.2002, 239 F. Supp. 2d 1265.

(5).Constitution 5th Amendment said: Substantive due process is violated if government actor deprived plaintiff of identified interest in life, liberty or property protected by 5th Amendment, or if govern ment actors' conduct shocks the conscience. Aversa v U.S. C.A.1 (R.I) 1996, 99F.3d 1200.

(6).Successful plaintiff in taking case against the United States is entitled to interest computed from the date of the taking to the date of payment by defendant; moreover, compound interest may be necessary to accomplish complete justice under the just compensation clause of the 5th Amendment. Rose Acre Farms, Inc., v U.S., Fed.Cl.2003, 55 Fed.Cl.643.

(7).Under 5th Amendment, takings for a private use, as opposed to a public use, are presumptively unconstitutional. Broad v Sealaska Corp., C.A.9 (Alaska)1996, 85F.3d.422.

(8). Constitution 5th Amendment said: Any claim, 5th Amendment

takings clause pre-empted motel owners' substantive due process claim against City, based on ownership allegations that city closed motel for code violations and refused to issue building permits necessary for owners to bring motel into complaince, all in order to drive motel out of business; if allegations were true, such actions would be "taking"of owners'property, and takings clause provided explicit textual source of constitutional protection against type of conduct challenged by owners. Patel v Penman,C.A.9 (Cal.,)1996, 103F.3d 868.

(9).Constitution 5th Amendment said:- Prohibition against taking of private property without just compensation applies against the states through Amendment 14. Webb's Fabulous Pharmacies, Inc, v Beckwith, Fla.,1980,101 S.Ct.446,449 U.S.155,66 L.Ed. 2d 358.

(10).The makers of our constitution undertook to secure conditions favorable to the pursuit of happiness. To protect that right, every unjustifiable intrusion upon the privacy of the individual whatever the means employed must be deemed a violation of the 4th Amendment,and the use, as evidence in a criminal proceeding,of facts ascertained by such intrusion must be deemed a violation of the 5th Amendment.

Constitution Art 1#7

(1).Constitution Art 1#7: The ultimate responsibility for protection of private property rights lies with the Courts, and the Courts have a duty to do more than defer to the legislative. Wolfe v State,1967 53 Misc. 2d 14, 277, N.Y.S. 2d. 985.

(2).Constitution Art 1#7 said: "Just Compensation," comprehends all elements of damage toan owner by appropriation ofhis property and, when those elements havebeen given their proper weight,what is arrived at is a single sum of money which is compensation for the property right taken from the owner. In reWacht's Estate,1942, 32 N.Y.S. 2d 871.

(3).Constitution Art 1#7 said, "To establish deprivation of property without due process of law, party must demonstrate that property rights exists and that it has been confiscated, extinguished, destroy ed or that essential attribute of property has been taken away so that its value has been impaired or its use restricted, or interrupted by constitutionally prohibited acts and without just compensation. Young v City of Binghamton, 1982, 112 Misc. 2d 1017, 447 N.Y.S. 2d 1017.

(4).Constitution Art 1#7 said: Private property cannot be taken for a public purpose under the police power without just compensation City of Rochester v Olcott, 1939, 173 Misc. 87, 16 N.Y.S. 2d 256.

(5).The Constitution Art 1#7 said:"Village which purchased fee of premises in which plaintiffs were month-to-month tenants did not engage in a defacto taking, but purchase was subject to same duties previous owner had to plaintiffs,and thus tenants retained,with respect to their fixtures, the same rights which they had as tenants, including the right to remove the fixtures at the termination of their tenancies. Fasciani v Village of Ossining (2nd Dept. 1977) 58. A.D. 2d 497, 396 N.Y.S. 2d 669."

(6).Constiitution Art 1#7 said: "Where State takes property, owner must be indemnified so that he may be put in same relative position in so far as this is possible, as if taking, had not occurred. Rose v State, 1969, 24 N.Y.S. 2d 81, 298 N.Y.S. 2d 968, 246 N.E. 2d 73.

Constitution Amendment Art 1#12

(1).Constitution Amendment Art 1#12 said: All searches and seizures conducted without a warrant are perse unreasonable, with but few well established exceptions. People v Watt,1983,118 Misc. 2d 930, 462 N.Y.S. 2d 389.

West F.S.A #713.67-713.69

(1).West F.S.A #713.67-713.69 permitting ejectment of tenant and

the impressment of a lien in favor of landlord on tenant's personal property on premises without notice, hearing of judiciai participa tion of any sort are unconstitutional as violations of this Amend ment. Barber v Radar, D.C.Fla., 1972, 350F. Supp.183.

U.S.C.A.28#1331

(1).Pursuant to U.S.C.A. 28#1331:211: An allegation that a City intended forcibly to remove a transmission wire belonging to complainants, who had a perpetual franchise to use the streets, and thereby to deprive complainants of their property without due pro cess of law and to impair the obligations of their contract, present ed a Substantial claim under the Constitution sufficient to sustain the jurisdiction of the United States Court. South Covington and C. St.Ry.Co. v City of Newport, Ky.1922, 42 S. Ct. 418, 259 U.S. 97, 66 L.Ed. 842.

(2). Pursuant to U.S.C.A. 28#1331:247: If state legislation impair ed the obligation of a contract or deprived of property without due process of law, or denied the equal protection of the laws remedies were found in former #41(1) of this title. Holt v Indiana Mfg.Co., Ind.1900, 20 S.Ct 272, 176 U.S.68, 44 L.Ed. 374.

(3).Pursuant to U.S.C. 28#1331: Where there is no diversity of citizenship between parties in Federal Court, a right or immunity created by Federal Constitution laws of United States must be an essential element of plaintiff's cause of action. Campo v Niemeyer, C. A. Ill. 1950, 182 F. 2d.115. See, also, Ehn v Price, D.C. Ill. 1974, 372 F. Supp. 151.

(4).Pursuant to U.S.C. 28#1331:- Where state officials, purporting to act under state Authority,invade rights secured byU.S.C.A.Constitution., they are subject to process of federal courts in order that persons injured may have appropriate relief.Hoffman v Stevens.D. C.Pa.1959, 177 F.Supp.898.

(5). Pursuant to U.S.C 28#1331which said that,"An allegation that acity intended forcibly to remove a transmission wire belonging to

omplainants who had a perpetual franchis to use the streets, and thereby to deprive complainants of their property without due process of law, and to impair the obligation of their contract, presented a substantial claim under the Constitution, sufficient to sustain jurisdiction of the United States Court. South Covington & C.St Ry. Co., v City of Newport, Ky, 1922, 42 S. Ct. 418, 259 U.S. 97, 66 L. Ed. 842 (R474:11).

(6).Pursuant to U.S.C.A 28#1331 which said that, "If state legislation impaired the obligation of a contract or deprived of property without due process of law, or denied the equal protection of the laws, remedies were found in former #41(1) of this title. Holt v Indiana Mfg.Co.,Ind.1900,20 S. Ct. 272,176 U.S. 68, 44 L. Ed.374.

Equal Protection

(1). The concepts of equal protection of the laws and due process both stem from the American ideal of fairness, and are not mutually exclusive, nor are the concepts always interchangeable,in that equal protection of the laws is a more explicit safeguard of prohibited unfairness than due process of laws, but a discrimination may nevertheless be so unjustifiable as to be violative of due process. Bolling v Sharpe, App. D.C.1954,74 S.Ct. 693, 347 U.S. 497, 98 L. Ed.884, supplemented 75 S.Ct. 753, 349 U.S. 294, 99 L.Ed.1083.

(2). Government action which, without justification, imposes unequal burdens or awards unequal benefits, is unconstitutional under equal protection doctrine. Hobson v Hansen, D.C.D.C.1967, 269 F. Supp.401.

Due Process

(1).Party seeking relief under this clause must establish first, that he has been deprived by State of "Life, liberty or property" and second, that the deprivation occurred without "due process" Wright v Mahan, D.C. Va.1979, 478 F. Supp. 468 affirmed F.2d 296.

(2).In general, due process requires that individual be given notice and opportunity to be heard before being deprived of property

interest. Amstar Corp., v M/V Alexandros T., D.C. Md. 1977, 431 F. Supp. 328.

CPLR 7102

(1).Pursuant to CPLR 7102: Former provisions of this section governing procedure in anaction to recover a chattel which permitt ed the prehearing seizures of subject matter of the action without the intervention or order of a judicial officer failed to conform to strictures of U.S.C.A.Const. Amend. 4, made applicable by U.S.C. Const Amend. 14, and were unconstitutional on their face. Laprease v Raymours Furniture Co., 1970, 315 F. Supp. 716.

(2).Pursuant to CPLR 7102: Procedural due process requires that notice and an opportunity to be heard be provided the alleged debtor before his property is seized pursuant to this article, or at least that the creditor present to a judicial officer the circumstances allegedly justifying summary action and failure of this section to do so provide rendered it unconstitutional as violative of procedural due process. Laprease v Raymours Furniture Co., 1970, 315 F. Supp. 716.

(3).CPLR 7102 (a) makes clear that in an action to recover possession of a chattel, the sheriff may not proceed with a prejudgement seizure of the chattel without prior authorization of the Court.

Loss of income

(1).Loss of income must be accounted forin awarding just compensation because of taking. Troy Ltd., v Renna, C.A.3 (N.J) 1984, 727 F.2d 287.

Seizure

(1).Police must obtain warrant when they intend to seize an object outside scope of valid search incident to arrest, in way of search or seizure is an evil and no intrusion at all is justified without a careful prior determination of necessity. Coolidge v New Hampshire,U.S. N.H. 1971, 91 S. Ct 2022, 403 U.S. 443, 29 L. Ed. 2d 564.

Res Judicata

(1).At common law a dismissal on ground other than merits would not constitute res judicata in later case. Madden v Perry, C.A. 111, 1959, 264 F.2d 169.

Rights

(1).The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred. Wilkinson v Leland (1829).

APPENDIX H

NEW YORK COURT OF APPEALS

[Filed June. 12,2003]

No.

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff-Appellant

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants-Appellees

APPEAL FROM THE SUPREME COURT
APPELLATE DIVISION, SECOND DEPARTMENT
FOR THE DISTRICT OF NEW YORK

ORDER

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

Ordered, that the appeal be and the same hereby is dismissed with out costs, by the Court sua sponte, upon the ground that no substan tial constitutional question is directly involved.

By: Stuart M. Cohen
Clerk of the Court

Notice of Appeal as of Right

The plaintiff Ally thenfiled a notice of appeal as of right, in the State of New York,Court of Appeals asfollows:Please Take Notice, that the above named pro-se plaintiff-appellant,Ackleema Ally,here by appeals to the Court of Appeals, State of New York from the order as final judgment under CPLR 5501(a) entered February 18, 2003 of the Honorable J.P. Altman, Smith, McGinity and Townes, JJ.,concur. Justices of the Supreme Court of the State of New York, Appellate Division, Second Department in the proceeding herein, and which order affirmed the judgment with Costs (Index No.23514 /97)of the Supreme Court ofthe State of New York, Queens County, and pursuant to CPLR 5501(a)(1)(2)(3)(4) that the judgment of (Index No.23514/97) entered August 26, 1999, and all orders in this action of the Honorable Arthur W.Lonschein,Justice ofthe Supreme Court of the State of New York, Queens County, that the interlocu-tory judgment(Index#5610/91)entered July 15, 1994, and all orders in this action of the Hon. Herbert A. Posner,Justice of the Supreme Court of the State of NewYork,Queens County, that the order enter -ed December 2,1996 (Index No.23087/95)of the Honorable Justice Joseph M. Lane, Justice of the Supreme Court of the State of New York Queens County, that all orders entered in the actions (Index No.21625/95 & 23087/95) of the Hon. Justice Herbert A. Posner, Justice of the Supreme Court of the State of New York, Queens County, that the order dated May 5, 1995 of Justice F Schmidt, Justice of the Landlord and Tenant Court, Queens County, that the order dated June 12,1995 of Justice Bernard S. Greenbaum, Justice of the Landlord and Tenant Court, Queens County, and that all orders in this action and the previous actions be reviewed by this Court on the grounds of the merits of the facts, and the evidence, the law, the Constitutional right, the Constitutional protections, the Constitutional liberty and freedom, together with protection under due process law clause of the 4th, 5th, and 14th Amendment rights of the appellant, and from each and every part thereof,of the said order as final judgment, Judgment, interlocutory, judgment,and all orders from the actions, Starting from the action Index No.5610/91to the final action Index No.23514/95 as a whole thereof. (R#334).

APPENDIX I

NEW YORK COURT OF APPEALS
SECOND CIRCUIT

[Filed Sep. 18,2003]

No. 2001-00011

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff-Appellant

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants-Appellees

APPEAL FROM THE SUPREME COURT
APPELLATE DIVISION, SECOND DEPARTMENT
FOR THE DISTRICT OF NEW YORK

ORDER

A motion for leave to appeal tothe Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due delibera tion having been thereupon had, it is ...Ordered, that the said motion be and the same hereby is denied.

By: Stuart M. Cohen
Clerk of the Court

Motion for Leave to Appeal

A motion for permission to appeal to the Court of Appeals dated July 3, 2003 was filed in the State of New York Court of Appeals on the grounds as follows: "Please Take Notice, that upon the copy of records, briefs and oral argument that is already filed in this Court and upon the annexed sworn affidavit with exhibits as evidence of Ackleema Ally the above named pro-se plaintiff-appellant, dated July 3, 2003, and upon all pleadings and proceedings heretofore had herein the pro-se plaintiff-appellant Ally will move this Court, at Court of Appeals Hall, of this Court to be held at the courthouse thereof located at 20 Eagle Street, Albany, New York, on the 18th day of July, 2003 at 9.30 o'clock in the forenoon of the day or as soon there after as pro-se plaintiff - appellant Ackleema Ally can be heard for an order granting her permission to appeal by this motion, from the order as final judgment under CPLR 5501(a) entered February 18, 2003, of the Honorable J.P. Altman, Smith, McGinity and Townes, JJ., concur. Justices of the Supreme Court of the State of New York, Appellate Division, Second Department in the proceeding herein, and this order affirmed the judgment with Costs of Index No.23514/97 of the Supreme Court of the State of New York, Queens County,the said order was mailed to me by the opposing party with notice of entry on March 26, 2003, and pursuant to CPLR 5501(a)(1)(2)(3)(4) that the judgment of Index #23514/97 entered August 26, 1999, and all orders in this action of the Honorable Arthur W. Lonschein, Justice of the Supreme Court of the State of New York, Queens County; that the interlocutory judgment Index No.5610/91 entered July 15,1994, and all orders in the said action Index No.5610/91 of the Hon. Herbert A. Posner, Justice of the Supreme Court of the State of New York, Queens County; that the order entered December 2, 1996 Index No. 23087 /95 of the Honorable Justice Joseph M. Lane, Justice of the Supreme Court of the State of New York, Queens County; that all orders entered in the actions Index No.21625/95 & 23087/95of the Honor able Justice Herbert Posner, Justice of the Supreme Court of the State of New York, Queens County; that the order dated May 5, 1995 of Justice F Schmidt, Justice of the Landlord and Tenant Court,Queens County; that the order dated June 12, 1 995 of Jus

tice Bernard S. Greenbaum, Justice of the Landlord and Tenant Court, Queens County; and that all orders in this action and the previous actions be reviewed by this Court on the grounds of the merits of the facts, and the evidence, the law, the Constitutional right, the Constitutional protections, the Constitutional liberty and freedom, together with protection under due process law clause of the 4th, 5th, and 14th Amendment rights of the appellant, and from each and every part thereof, of the s aid order as final judgment, Judgment, interlocutory judgment and all orders from the actions, starting from the action Index#5610/91 to the final action Index #23514/95as a whole thereof, and for such other and further relief as this Court deems just and proper. The pro-se plaintiff-appellant did file a Notice of Appeal as of right to this Court, dated April 24, 2003, which was dismissed without costs on June 12, 2003 upon the ground that no substantial constitutional question is directly involved, the said order with notice of entry was mailed to plaintiff-appellant on June23,2003,by the opposing party. The Court of Appeals has jurisdiction to review this order because (1). Even though I respect the Lower Court, and the Appellate Court's decision, but, I do believe that the Appellate Court did violate the plaintiff-appellant's individual right and liberties of the Constitution and the Bill of Rights, when they affirmed the lower Court's ruling and upheld theState Law against her claim when they made their final decision on an interlocutory judgment and not on a final judgment.(2).I also believe that the Appellate Court did violate the due process Clause of the 4th, 5th and 14th Amendment rights of the plaintiff-appellant when they affirmed the ruling ofthe lower Court with costs on an interlocutory judgment and not on a final judg ment and (3). The 14th Amendment of the U. S. Constitution said, "that No State shall deny to any person within its jurisdiction the equal protection of the laws." The Court of Appeals should accept this case for review because, (1). I do believe that the plaintiff-ap pellant does have the due process rights in every aspect of the law. (2). The ruling of the Lower Court and the Appellate Court is prejudiced to the plaintiff-appellant,since they made their ruling on an interlocutory judgment andnot on a final judgment.(3).The attorney

defendant did admit that he wrongfully made the execution which caused the eviction of the plaintiff-appellant, and the City Sheriffs did admit that they evicted the plaintiff-appellant, and they also made a false representation when they said that the judgment was a final judgment and that the Supreme Court has issued an order for the plaintiff-appellant's eviction, but the judgment was only an inter locutory judgment and not a final judgment and the Supreme Court did not issue a order for the eviction, so the defendants did not only intrude or trespass and illegally evicted the plaintiff-appellant, but they also destroyed her business and robbed her of the contents of the said business premises,including her household and personal property, yet,the Lower Court sanctioned the plaintiff-appellant for frivolous action, and the Appellate Court affirmed the judgment with costs, when they made the final decision in this action.

Plaintiff-appellant do believe that damaging another person's property is against the law, and property damage is a civil tort. So I do believe that the Courtof Appeals should accept this casefor review. (R#337). The sworn affidavit which was attached to the plaintiff Ally's notice of motion to the Court of Appeals, summarized the background facts and the procedural history of this action,and since the plaintiff did asked the Court of Appeals to review the interlocutory judgment and all orders pursuant to CPLR 5501(a)(1)(2)(3)(4) she produced the forged lease and the deposition as evidence of the facts of the deposition ofNazmoon Hassan (original landlord)which her attorney did not produce at the trial, which may have changed the verdict in the interlocutoryjudgment. All the necessary documents and sworn affidavits were produced to support the motion for permission to appeal before the Court of Appeals, but a order was signed by Mr Stuart M.Cohen,

APPENDIX J

NEW YORK SUPREME COURT
APPELLATE DIVISION, SECOND DEPARTMENT

[Filed Feb. 18,2003]

No. 2001-00011

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff-Appellant

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO
Defendants-Appellees

APPEAL FROM THE SUPREME COURT
FOR THE DISTRICT OF NEW YORK

DECISION & ORDER

In an action to recover damages for wrongful eviction, the plaintiff appeals from a judgment of the Supreme Court, Queens County (Lonschein J),dated August 19,1999,which,after a hearing,imposed a sanction upon her in the sum of $10,000 for frivolous conduct

Ordered that the judgment is Affirmed, with costs.

Although a jury found that the plaintiff was not wrongfully evicted, and a court previously dismissed two prior actions by the plain-

tiff seeking damages arising out of the eviction, the plaintiff commenced this action for the same relief.Under the circumstances,the Supreme Court providently exercised its discretion in imposing a sanction upon the plaintiff for engaging in frivolous conduct (see 22 NYCRR 130-1.1[c]; Gache v Town Village of Harrison, 251 AD 2d 624; Janitschek v Trustees of Friends World Coll., 249 AD 2d 368: Murray v National Broadcasting Co.,217 AD2d 651).

The plaintiff's remaining contentions are not properly before this Court on this appeal.

Altman, J.P.,Smith, McGinity and Townes, JJ., concur. ENTER.

By: James Edward Pelzer
Clerk

APPENDIX K

NEW YORK SUPREME COURT

[Filed Aug. 19,1999]

No. 23514/97

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants

JUDGMENT

Summons and Verified Complaint was brought before this Court by plaintiff, Ackleema Ally, d/b/a Ahmad Meat Market. The plaintiffAckleema Ally was directed to appear before the Court to show cause why further sanctions should not be imposed,a hearing onthe issue of sanctions was heard before Honorable Justice Arthur A. Lonchein at the IAS Part 2 of this Court held in and for the County of Queens at theCourthouse locatedat 88-11Sutphin Blvd.,Jamaica, in the City of New York on the 29th day of April, 1999 the parties thereto having duly appeared, the plaintiff, Ackleema Ally, acting pro-se,and the defendant, Susan Cruise, attorney, acting for the defendants Sheriff Kerry J. Katsorhis and Deputy Sheriff Martello, and the allegations of the parties having been heard and due deliber ation having been had and the Court having duly made it's decision

on the record on the 30th day of April, 1999 awarding defendant, Richard S. Graver the sum of $5,000 (Fivethousand dollars)for costs and attorney's fees on account of her frivolous action within the meaning of #130-1.1 of the Rules of the Chief Administrator of the Court, and awarding the sum of $5,000 (Five thousand dollars) in sanctions on account of the motion brought against the defendants City Sheriff and on whose behalf the City of New York was compelled to defend. Now, it is ..Ordered and Adjudged that the defendant, Richard S. Graver of 777 Westchester Ave., Suite 204, White Plains, New York, 10604 do recover of the plaintiff Ackleema Ally, residing at 95-22 123rd Street, Richmond Hill, New York 11419, the sum of $5,000 (Five thousand dollars) and the sum of $5,000 (Five thousand dollars) to be deposited with the clerk of the Court for transmittal to the Commissioner of Taxation and Finance, which is the total sum of $10,000 (Ten thousand dollars).

ENTER. By: [Illegible]
Dated: August 19,1999 J.S.C.

APPENDIX L

NEW YORK SUPREME COURT

[Filed April 30,1999]

No. 23514/97

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants

MEMORANDUM

The court had directed the plaintiff, Ackleema Ally, to appear be fore it to show cause why further sanctions should not be imposed. heretofore, the court found that this plaintiff had engaged in fruitless, vexatious,frivolous litigation which could only be designed to annoy the defendants. Her claims have already been dismissed. By order dated November 23, 1998, and following a hearing, the court imposed counsel fees on her in the amount of $2,500 payable tothe defendant Graver. Apparently, Mrs Ally has not been impressed by that sanction.

At this hearing, the court gave the plaintiff the opportunity of making some amends for her persistence in this fruitless litigation. Instead, she attempted to justify her position with the same arguments that the court has rejected so many times before. She has

never chosen to appeal the court's determination,but rather seeks to wear the defendants down with a multiplicity of her repeated arguments. She has not learned that she must quit. She has, here, moved to stay execution of the prior orders of the court, based upon a new evidence or arguments, but merely restating the arguments which have already been rejected more than once.This conductis complete ly without merit in law, and was undertaken primarily to delay or prolong the resolution of this litigation,and to harass the defendants. She has continued this conduct long after the lack of its legal and factual basis became apparent and was brought to Ms Ally's attention. Her conduct is, therefore, frivolous within the meaning of # 130-1.1 of the Rules of the Chief Administrator of the Courts.

Accordingly, the court must sanction her again.This time the sanc -tions will be a judgment of this court and thus may be collectable. The court orders that the plaintiff pay costs and sanctions in the total amount of $10,000. $5,000 of this shall be costs, including attorney's fees, payable to Richard S. Graver. $5,000 shall be sanctions, on account the motion as against the defendant City Sheriffs and on whose behalf the City of New York was compelled to defend. The sanction shall be deposited with the clerk of the court for transmittal to the Commissioner of Taxation and Finance.

Settle Order.
Dated: April 30, 1999

APPENDIX M

NEW YORK SUPREME COURT

[Filed Mar. 25,1999]

No.23514/97

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants

ORDER

Upon the foregoint it is Ordered that this motion is deemed a motion to reargue. and is denied.

The court has already imposed sanctions on the plaintiff for frivolous conduct in this action. This motion is yet another frivolous act by a litigant who refuses to accept the determination of the court. Accordingly, the plaintiff Ackleema Ally is directed to appear be fore the court on April 29, 1999, to show cause why further sanctions should not be imposed.

Dated: March 25, 1999

By: [Illegible]
J.S.C.

APPENDIX N

NEW YORK SUPREME COURT
[Filed Nov. 23,1998]

No. 23514/97

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants

ORDER

Upon the foregoing papers, and after a hearing held on December 18, 1997, and for the reasons stated on the record and set forth here inafter, it is Ordered and Adjudged that the defendant Graver shall recover of the plaintiff Ally the sum of $2,500 as and for costs pursuant to 22 NYCRR 130-1.1, and that the defendant Grave shall have execution therefor.

At a hearing, held on December 18, 1997, the court determined that the plaintiff was guilty of frivolous conduct in commencing this action,in that theaction was completely without merit,and could not be supported by a reasonable argument for an extension,modification

or reversal of existing law; and in that it was undertaken primarily to harass the defendants.

As noted in the court's decision of November 19,1997,this action is essentially identical with two prior actions for wrongful eviction which were consolidated and dismissed with prejudice by Justice Posner. The plaintiffs are bound by that decision, and cannot seek to circumvent it by bringing yet another action. Even if they were not so bound,this claim is barred by the 1994 judgment in the under lying eviction action. Even if they were not precluded by that judgment, this claim, as against the defendant Graver, is clearly merit less, as it is settled that an attorney may not be held liable to a third party for acts done in the course of his representation of a client, in the absence of fraud, collusion or a malicious or tortious act (Michalic by Nakouics v Klat, 128 AD2d 505; Viscardi v Lerner, 125 AD2d 662). Since this is at least the third in a succession of repetitive, meritless applications and lawsuits,an award of sanctions or costs and attorney's fees is warranted.

The plaintiff Ally was given an opportunity at thehearing of December 18, 1997, to explain or justify her conduct, and could not do so, beyond restating her grievance. That grievance is meritless as a matter of law, as set forth above.

Rather than impose a sanction, the court deems it appropriate to recompense the defendant Graver for the time spent by him in defending this meritless action. At the hearing, Graver was asked how many hours of work he had devoted to defending this action, and responded "About 26 hours" When asked what his usual hourly charge was, he replied that he charged anywhere from $175to $250 an hour, depending on the case. Assuming that the lowest rate applied, Graver has lost some $4,550 in defending himself in this action. Rather than impose costs in that entire amount considering the plaintiff's pro-se status, the court imposes costs and attorney's fees

in the amount of $2,500, payable by the plaintiff Ally personally to the defendant Graver.

Dated: November 23, 1998

By: [Illegible]
J.S.C.

APPENDIX O

NEW YORK SUPREME COURT

[Filed Nov. 23,1998]

No. 23514/97

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants

ORDER

Upon the foregoing papers it is Ordered that this motion is granted, only to the extent that the action is dismissed.

As noted in the order of November 19, 1997,dismissing the action as against the defendant Graver, and in the order of even date here with, imposing costs and attorney's fees against the plaintiff Ally and in favor of the defendant Graver, this action is essentially duplicative of two prior actions which were consolidated and dismissed by order of Justice Posner. That conclusion is not changed by the fact that the plaintiff has now chosen to sue the public officers who

carried out the court's mandate, rather than the persons in whose favor that mandate was granted.

Dated: November 23, 1998

By: (Illegible)
J.S.C

APPENDIX P

NEW YORK SUPREME COURT

[Filed Nov. 23,1998]

No. 23514/97

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants

ORDER

Upon the foregoing papers it is Ordered that this motion is granted, only to the extent that the action is dismissed.

As noted in the order of November 19, 1997,dismissing the action as against the defendant Graver, and in the order of even date herewith, imposing costs and attorney's fees against the plaintiff Ally and in favor of the defendant Graver, this action is essentially duplicative of two prior actions which were consolidated and dismissed by order of Justice Posner. That conclusion is not changed by the

fact that the plaintiff has now chosen to sue the public officers,who carried out the court's mandate, rather than the persons in whose favor that mandate was granted.

Dated: November 23, 1998

By: (Illegible)
J.S.C

APPENDIX Q

NEW YORK SUPREME COURT

[Filed Nov. 23,1998]

No. 23514/97

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants

ORDER

Upon the foregoing papers it is Ordered that this motion is granted, and the complaint is dismissed, and the cross-motion is denied.

The parties are directed to appear before the court on December 18, 1997, at 9.30am., for a hearing on the issue of sanctions.

This action concerns an ejection action commenced in 1991 by the defendants Kishore and Palmour against the present plaintiffs. The movant, the defendant Graver, was the attorney for Kishore and

Palmour in that action, which resulted in 1994 in a interlocutory judgment of ejectment in favor of Kishore and Palmour and against the present plaintiffs. A counterclaim asserted by the present plaintiff for wrongful eviction was dismissed.

The present plaintiffs then commenced two separate actions in 1995, claiming damages for wrongful eviction.These were consolidated, and dismissed by the Hon.Herbert A. Posner with prejudice, on May 28, 1997, on the grounds that the plaintiffs had failed to comply with orders to disclose, and that they persisted in making "meritless and incomprehensible motions."

This action is essentially identical with the actions which were con solidated and dismissed with prejudice by Justice Posner. The plaintiffs are bound by that decision, and cannot seek to circum vent it by bringing yet another action. Even if they were not so bound, this claim is barred by the1991judgment. Even if they were not precluded by that judgment, this claim, as against the movant is clearly meritless, as it is settled that an attorney may not be held liable to a third party for acts done in the course of his represent-tation of a client, in the absence of fraud, collusion or malicious or tortious act (Michalic by Nakouics v Klat,128 AD2d 505;Viscar di v Lerner, 125 Ad2d 662). Since this is at least the third in a suc cession of repetitive, meritless applications and lawsuits, sanctions appear to be warranted.

Dated: November 19, 1997 By: [Illegible]
J.S.C.

APPENDIX R

NEW YORK SUPREME COURT

[Filed May 28,1997]

No.21625/95

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants

ORDER

Upon the foregoing papers itis ordered that this motion is granted, and the complaint in this action is dismissed with prejudice.

The plaintiff has failed to comply with this Court's orders of Nov -ember 13, 1996 and January 13, 1997 and therefore cannot proceed with this action. Moreover,she has inundated this Court with merit less and incomprehensible motions and submissions despite repeat-ed instructions by the court to cease. As a result both the defend

-ants and the Court have been unnecessarily inconvenienced and put to needless expense of time and resources.

Dated: May 28, 1997 By:

J.S.C.

APPENDIX S

NEW YORK SUPREME COURT

[Filed Jan. 27,1997]

No. 21625/95

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants

ORDER

Upon the foregoing papers it is ordered that this motion and cross -motion are disposed of as follows:

The plaintiff previously has been admonished by the Court to cease making meritless motions. The instant motion is not only with out merit it is also incomprehensible. Accordingly, the defendants are awarded $500 costs and sanctions to be paid to their attorney, Socrates Scott Nicholas, within 20 days of service of a copy of this

order. The plaintiff is stayed from making any further motions until the costs and sanctions awarded by this order and the prior order of November 13, 1996 are paid. The plaintiff is also stayed from any further proceedings in this action until she responds to the defendants' interrogatories dated June 21, 1996.

Dated: January 13, 1997 By:

J.S.C.

APPENDIX T

NEW YORK SUPREME COURT

[Filed Dec. 2,1996]

No. 21625/95

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants

ORDER

The pro-se plaintiff in each ofthe above entitled actions,Ackleema Ally, brings the within motion for Summary Judgment pursuant to CPLR#3212. The defendants in each of the above entitled actions Chandra Kishore and Prabha Palmour, a/k/a Ralph Sukhoo and Rosaline Sukhoo, cross move to consolidate the within action with a related action currently pending before Honorable Herbert A. Posner, J.S.C., in Queens County. Upon reading and filing the notice of motion, dated January 22, 1996 supported by the affidavit of Ackleema Ally, sworn to January 22, 1996 with the exhibits an-

nexed; and upon the notice of cross-motion, dated June 26, 1996 supported by the affirmation of Socrates L.Nicholas,dated June 26, 1996 and the affidavit of Ralph Sukhoo, a/k/a Chandra Kishore, sworn to June 26, 1996 with the exhibits annexed and upon the affidavit in eply of Ackleema Ally, sworn to July 1, 1996,with the exhibits annexed thereto.

After due deliberation thereon and upon the decision of the Court, dated August 28, 1996.

Now on motion of Ackleema Ally, pro-se and upon the cross-motion of Socrates L.Nicholas, attorney for the defendants herein, it is.....Ordered, that the motion is denied without prejudice to renew before Part 5 at the appropriate time, and it is .....Ordered, that the coss-motion is granted to the extent that Action #1 is referred to Part 5 (Hon. Herbert A. Posner to be tried jointly with Action #2, already pending in Part 5, and it is further.....Ordered, that the title of the actions combined for joint trial shall read as follows:

----------X

Ackleema Ally, d/b/a Ahmad Meat Market ACTION NO:1

Plaintiff

-against- Index No:21625/95

Chandra Kishore and Prabha Palmour
a/k/a Ralph Sukhoo and Rosaline Sukhoo

Defendants

----------X

Ackleema Ally d/b/a Ahmad Meat Market

Plaintiff ACTION NO:2

-against- Index No:23087/95

Chandra Kishore and Prabha Palmour
a/k/a Ralph Sukhoo and Rosaline Sukhoo

Defendants

----------X

and it is further.....Ordered, that each action shall retain its own Index # and separate Notes of Issue shall be filed for each action, and...it is further .....Ordered, that a copy of this order with Notice of Entry be served on all parties to the actions combined, the Clerk of Queens County, and, at the time of filing Notes of Issue, on the Clerk of the Trial Term Office.

ENTER By: [Illegible]
Dated: Dec.2,1996 J.S.C.

APPENDIX U

NEW YORK SUPREME COURT
[Filed Dec. 2,1996]

No. 21625/95

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants

ORDER

Upon the foregoing papers it is ordered that this motion by plaintiff for summary judgment and to strike defendants' answer is denied since there are clearly triable issues of fact and defendants' answer was timely served in accordance with this Court's order of May 17, 1996.

The defendants are awarded $500 in costs and sanctions in view of plaintiff's frivolous conduct in commencing separate actions for the same relief and bringing on meritless motions. The plaintiff is directed to pay said sum of $500 by check or money order payable to defendants' attorney Socrates Scott L. Nicholas, Esq., within 20 days of service of a copy of this order.

Dated: Nov.13, 1996 J.S.C

APPENDIX V

NEW YORK SUPREME COURT

[Filed May 17,1996]

No. 21625/95

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants

ORDER

Upon the foregoing papers it is ordered that this motion and the cross-motion, following a conference before the Court on May 10, 1996, are disposed of as follows:

The defendant is confusing the prior action with this new complaint for damages. The motion and cross motion are denied and de-

fendant's time to serve and file an answer is extended for 20 days after the service of a copy of this order.

Dated: May 17, 1996 By: [Illegible]
J.S.C.

APPENDIX W

NEW YORK CIVIL COURT
HOUSING PART

Filed June 12,1995]

No. 21625/95

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Plaintiff

v.

CHANDRA KISHORE AND PRABHA PALMOUR
a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Defendants

ORDER

Upon the foregoing cited papers,the Decision/Order in this motion is as follows: Motion granted with costs, petitioner proceeding dismissed with prejudice.

Dated: June 12, 1995

By: By: [Illegible]
Judge, Civil/Housing Court

Judge Bernard S. Greenbaum

APPENDIX X

NEW YORK SUPREME COURT

[Filed July 15,1994]

No. 5610/91

CHANDRA KISHORE and PRAHBA PALMOUR

Plaintiffs,

v.

NAZMOON HASSAN and ACKLEEMA ALLY
d/b/a AHMAD MEAT MARKET

Defendants

INTERLOCUTORY JUDGMENT

The above entitled action having duly come on for trial before Hon -orable Justice Herbert A.Posner and a Jury at Trial Term Part 5 of the Supreme Court,held in and for the County ofQueens,on the 11th 12th,13th, 18th, and 19th of May 1994, and plaintiffs having appeared by Richard S. Graver, their attorney, and defendant, Nazmoon Hassan, having appeared by Anthony F.X.Finn, her attorney, and defendant,Ackleema Ally d/b/a Ahmad Meat Market,having appear ed by Alan J. Goldberg, her attorney, and the issues having been tried and the Court having directed the jury to find a special verdict

on the issues referred to below, and the jury on the 19th day of May 1994 and reading as follows:

Jury returns verdict on issue of liability as follows:
As to defendant, Nazmoon Hassan:

1. "Was the condition of the walls in the front upstairs apartment that the panelling concealed a dangerous condition?" Yes by unanimous vote of jury.
2. "Did the defendant Hassan know or should she have known that the condition concealed by the panelling was a dangerous condition?" Yes, by unanimous vote of jury.
3. "Was the condition of the walls in the rear apartment in dangerous conditions?" Yes, by unanimous vote of jury.

As to defendant, Ackleema Ally d/b/a Ahmad Meat Market

1. "Was the defendant, Ally constructively evicted from the rear store of the premises at anytime after the Housing Court order of June 30, 1988 restoring possession to her was issued? No, by unanimous vote of jury.
2. (Not applicable due to answer to #1)

3. "Was the lease for the rear store occupied by defendant Ally dated April 15, 1986, altered from a one year lease to an eleven year lease after it was signed by the owner of the premises, Kamaral Hassan and given to defendant Ally?" Yes, by unanimous vote of jury.

Jury polled upon motion of defendant Ally and verdict confirmed.
All defendants move to set aside verdict – Denied.

Trial on issue of damages marked off trial calendar pending submission of memos of law to Court.

And Richard S. Graver, attorney for plaintiffs, having made a motion upon said verdict for judgment in favor of plaintiffs against Nazmoon Hassan, for judgment in their favor against defendant, Ackleema Ally and for a judgment dismissing the counterclaims of defendant, Ackleema Ally, and, Alan J Goldberg, attorney for defendant,Ackleema Ally, having made a motion for judgment in her favor against defendant, Nazmoon Hassan, on her cause of action for wrongful eviction, and Anthony F. X. Finn, attorney for defendant, Nazmoon Hassan, having made a motion for judgment in her favor against defendant, Ackleema Ally on her cause of action for rent owed, and due notice of said motions having been given and the Court having granted such motions in all respects.

Now upon such verdict entered in the office of the Clerk of the County of Queens and on motion of Richard S.Graver,attorney for plaintiffs, it is

Ordered and Adjudged, that plaintiff have judgment against defendant, Ackleema Ally restoring plaintiffs to immediate possession of the premises known as 103-25 127 Street, Richmond Hill, New York, and it is further,

Ordered and Adjudged, that in the event defendant,Ackleema Ally pays to plaintiff one thousand dollars($1,000.00)on or before June 1, 1994, said defendant may remain in possession up to and including June 30, 1994, (This verse was crossed off on the judg ment), and it is further,

Ordered and Adjudged, that defendant, Ackleema Ally, immediate

vacate the premises know as 103-25 127 Street,Richmond Hill,New York, unless said defendant paid plaintiffs one thousand dollars ($1,000.00) on or before June 1, 1994, and in that event, said defendant shall vacate said premises on or before June 31, 1994, (This verse was crossed off on the judgment), and it is further,

Ordered and Adjudged,that plaintiffs have judgment against defendant, Ackleema Ally, dismissing her counterclaims against the plaintiff upon the merits, and it is further

Ordered and Adjudged,that plaintiffs have judgment against defendant, Nazmoon Hassan, on the second, third and fourth causes of action alleged in their complaint, and it is further

Ordered and Adjudged, that plaintiffs have judgment against, Ackleema Ally, on their fifth cause of action alleged in their amended complaint, and it is further

Ordered and Adjudged, that defendant Ackleema Ally, have judgment on the merits against defendant,Nazmoon Hassan,on her claim for wrongful eviction, (Ally do not know for what reason this verse was scratched off on the judgment, because Justice Posner did confirm that Ally was illegally evicted and that judgment was granted against Nazmoon Hassan on January 19, 1996 (R#236) and it is further

Ordered and Adjudged,that defendant,Nazmoon Hassan,have judgment on the merits against defendant, Ackleema Ally, on her claim for rent owed, (This verse was scratched off on the judgment) and it is further

Ordered and Adjudged,that upon the filing of a stipulation executed by the parties to this action or on motion of any of the parties,

this action shall be restored to the trial calendar for a trial on damages and the preference granted, by the Court, by order dated January 20, 1994, by reason of plaintiff's age, shall continue, and it is further

Ordered and Adjudged, that any further relief, or any further provision sought to be added to the interlocutory judgment by plaintiffs may be had at the foot thereof, upon proper showing and due notice to the attorneys for defendants.(This verse was scratched off on the judgment),

ENTER. By: [Illegible]
Dated: July 1, 1994 Clerk

APPENDIX Y

NEW YORK SUPREME COURT

[Filed Jan. 19,1996]

No. 5610/91

CHANDRA KISHORE and PRAHBA PALMOUR

Plaintiffs,

v.

NAZMOON HASSAN and ACKLEEMA ALLY
d/b/a AHMAD MEAT MARKET

Defendants

JUDGMENT

The issues of damages in the cross claim for wrongful eviction by defendant Ackleema Ally, d/b/a Ahmad Meat Market, against the defendant, Nazmoon Hassan, having regularly come on for trial before Honorable Justice Herbert A. Posner, without a jury, at IAS Part 5, of this Court held in and for the County of Queens at the Courthouse located at 88-11 Sutphin Blvd., Jamaica in the City of New York on the 17th day of November 1995 and the parties thereto having duly appeared, the defendant, Nazmoon Hassan, acting pro-se, and the allegations and proofs of the parties having been heard and due deliberation having been had, and the Court having

duly made its decision on the record on the 17th day of November 1995 awarding defendant, Ackleema Ally, the sum of $3,000, it is hereby Ordered and Adjudged that the defendant, Ackleema Ally, residing at 95-22 123 Street, Richmond Hill, New York 11419 do recover of defendant, Nazmoon Hassan, residing at 16 Euclid Avenue, Dix Hills, New York 11746, in the total sum of $3,000, and that defendant, Ackleema Ally, have execution therefor.

ENTER.

By: [Illegible]
J.S.C.

(2)

Supreme Court, U.S.
FILED
JUN - 9 2006
OFFICE OF THE CLERK

NO. 05 - 1166

IN THE

SUPREME COURT OF THE UNITED STATES

Ackleema Ally, d/b/a Ahmad Meat Market

Petitioner,

v.

Richard S. Graver, Sheriff Kerry J. Katsorhis, Deputy Sheriff Martello, Chandra Kishore and Prabha Palmour a/k/a Ralph Sukhoo and Rosaline Sukhoo

Respondents

On Petition For Writ Of Certiorari To the United States Court of Appeals For the Second Circuit

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PETITION FOR REHEARING

Ackleema Ally
pro-se petitioner
696 Ilyssa Way
Staten Island, New York 10312
(718) 605 8673

QUESTIONS PRESENTED

Continued from P: (ii) of WOC

1. Whether the plaintiff Ally could not bring another action and were bound by the decision of Justice Posner when he dismissed with prejudice the action Index #21625/95 when Hon. Justice Lane confirmed that the action 21625/95 and 23087/95 were not for the same relief,that they have their own Index No.and own Note of Issue and was only combined for Joint Trial, and only against the defendants Kishore and Palmour and not against Richard S. Graver or the New York City Sheriffs?

2. Whether the action Index #23514/97 was barred by the 1994 interlocutory judgment, since the action 23514/97 is for new wrongs that were done after the 1994 judgment not only by the plaintiffs Kishore and Palmour in the 1991 action but also by three new defendants, Richard S. Graver, the New York City Sheriff Kerry J. Katsorhis, and Deputy Sheriff Martello?

3. Whether fraud, collusion and tortious acts are absent in the action 23514/97, when the said defendants actions are not only the existence of actionable wrong but the wrong caused damages?

4. Whether the 4th Amendment rights of the plaintiff Ally was violated when the New York City Sheriffs seized her business premises with all its contents including all of her household and personal property without a warrant?

5. Whether the intentional conduct of the defendants are fraud under The Federal Tort Claims?

6. Whether the City Sheriffs who allegedly caused the damages or loss were employees of the government within the meaning of The Federal Tort Claims?

7. Whether theCity Sheriffs whose negligent or wrongful act act or omission is said to be the cause of the damages or loss, were federal employees within The Federal Tort Claims Act?

8. Whether the City Sheriffs are liable in damages to the plaintiff if he forgets to file a notice of attachment or levying execution in the appropriate County Clerk's office?

9. Whether willful and malicious misconduct is actionable under Federal Tort Claims Act?

10. Whether Government can be sued on claim of trespass?

11. Whether United States could be held liable under the Federal Tort Claims Act for intentional infliction of of emotional distress?

12. Whether District Court is or is not required to dismiss complaint alleging conduct which might fall within intentional tort exception to Federal Tort Claims Act, where conduct also supports claim for tort not within Exception?

13. Whether claim against Government for intentional infliction of emotional distress is not excluded as matter of law from Federal Tort Claims Act?

PARTIES TO THE PROCEEDING

All parties to the proceedings are identified in the caption of the case. Ackleema Ally was doing business as Ahmad Meat Market,the premises was constructed and developed to be used as a Halal Meat and ancillary products store. The petitioner alleged that two of the respondents were new owners of the building where her business premises were located, one is an attorney,one is a City Sheriff of New York City and one is the Deputy Sheriff of the City Sheriff of New York City.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6 the Petition is filed on Behalf of an individual, who is the sole proprietor and doing business as Ahmad Meat Market. The corporate disclosure statement is not applicable, since the business is not a corporation.

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STATUTES AND RULES

Continued from P:(xiii) of WOC

Pursuant to 28#1346: One of primary purposes of Subsec.(b) of this section and section 2671 et seq. of this title was to waive sovereign immunity of United States to tort suits in order to provide an orderly system for compensating those who were injured through the tortious acts of government employees committed in the course of their employment. Lepatourel v U.S., D.C. Neb. 1978 463 F. Supp.264.

Pursuant to 28#2671: Whether a person whose negligent or wrongful act or omission is said to be the cause of an injury, is a federal employee within Federal Tort Claims Act, is to be determined by Federal law rather than by the law of the State. LeFevere v U. S., C. A 5 (Fla.) 1966, 362 F. 2d 352.

Pursuant to 28 #2671: Federal Law and not State Law governed determination of question of whether member of National Guard was federal employee with Federal Tort Claims Act. Blackwell v U.S., C.A.5 (La.)1963, 321 F. 2d 96.

Pursuant to 28#2671: Whether a person allegedly causing the injury or loss was an employee of the government with in the meaning of Federal Tort Claims Act is a question of federal law, not state law. Sheff v U.S., D.C. Cal. 1971, 325 F. Supp. 1082.

Fraud under the FTC requires intentional conduct. United States v Green, 35 F. Supp.12 (E.D.N.Y.1960).

The Federal Government has generally waives its non tort Action immunity in the Tucker Acts, 28 U.S.C.A.#1346(a)(2) and its tort immunity in the Federal Tort Claims Act, 28 U.S. C.A.#1346(b),2674.Most States have also waived immunity in various degrees at both the State and local government levels.

The federal, and derivatively, the state and local governments are free from liability for torts committed except in cases in which they have consented by statute to be sued e.g. Federal Tort Claims Act,State Tort Claims Act. Most States, either by statute or court decision have abolished or greatly restricted the doctrine of sovereign immunity at both the State and local levels.

Pursuant to U. S. C. A. 28#1346: Federal Tort Claims Act (FTCA) does not create federal substantive cause of action, but merely provides a remedy for state tort claims that would otherwise be barred by sovereign immunity. Sumner v U. S., M.D.Tenn. 1992, 794 F. Supp. 1358.

The States are bound to provide compensation for takings of private property pursuant to the Just Compensation Clause of of the 5th Amendment as made applicable to the States through the Due Process Clause of the 14th Amendment. First English Evangelical Lutheran Church v Los Angeles County (1987).

Whether an interest is a right or a privilege, when it is intentionally denied, procedural due process must be afforded. Goldberg v Kelly (1970).

The key concept in defining property today is "entitlement" when the government recognizes that an individual is legally entitled to a benefit, it thereby creates an expectancy that

the benefit will not be arbitrarily terminated. A property interest is created. The contract of lease support claims of "entitlement."

The first element for intentional infliction of emotional distress is whether the defendant's conduct was extreme and outrageous. Davis v Household Finance.

Federal Tort Claims Act covers intentional Torts. Intentional Torts are "wrongful acts" within the meaning of Statute making the Act sole remedy for actions against U. S. for negligent or wrongful Act or omission of employee of Government. Duffy v U.S., C.A. 7(Ill.) 1992, 966 F. 2d 307.

Pursuant to CPLR 6216:1 : To levy on real property, the Sheriff (not the plaintiff) simply files a notice of attachment in the appropriate County Clerk's office.If the Sheriff forgets to do this, he is liable in damages to the plaintiff. Doran v Sheriff of Orange County, 1977, 57 A.D. 2d 605, 393 N.Y.S. 2d 785.

Pursuant toCPLR 6214:An officer attaching chattels or levying execution thereon is liable for his negligence in caring for them.Vangellow v Eastside Sav. Bank 1939,11 N.Y.S. 2d 982.

Pursuant toU.S.C.A.28#2680: Because of invasion of privacy Does not fall within enumerated exemption of this section, Such claim is not barred by doctrine of governmental immunity. Black v Sheraton Corp. of America, 1977, 564 F.2d 531, 184 U.S.App.D.C. 46.

OTHER AUTHORITIES

IN THE

SUPREME COURT OF THE UNITED STATES

No.

ACKLEEMA ALLY, d/b/a AHMAD MEAT MARKET

Petitioner,

v.

RICHARD S. GRAVER, SHERIFF KERRY J.KATSORHIS, DEPUTY SHERIFF MARTELLO, CHANDRA KISHORE AND PRABHA PALMOUR a/k/a RALPH SUKHOO and ROSALINE SUKHOO

Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals For the Second Circuit

---

PETITION FOR REHEARING

OPINIONS BELOW

The Opinions below in this action are on P's. 1a-199a. and Appendix A-Y of the Writ of Certiorari, however the Index # on P:186a should read #23087/95 and not 21625/95) and the Index # on P: 192a should read #067496/95 and not 21625/95).

JURISDICTION

The Second Circuit decision affirming the District Court's dismissal of Ally's claims was entered on April 19, 2005, reproduced at App.D. on P: 7a and P: 68 of WOC, Ally then filed a timely Petition for Rehearing on May 2, 2005 reproduced at App: E. on P. 70a of WOC, and petition for Rehearing En Banc has been transmitted to the Judges for the Court and to any other judge that heard the appeal and no such judge has requested that a vote to be taken thereon. The Second Circuit entered itsOrder denying the Petition for Rehearing on September 21, 2005. The Order denying the Petition is reproduced at App. F. on P: 143a of WOC. Petitioner Ally invokes the jurisdiction of this Court under U. S. C. A. 28 #1254 (1)(2000); U. S. C. A. 28 #1257, #1257a; U. S. C. A. 28#1331, Supremacy Clause Art.VI and Art.111. and the U.S.Constitution. THE PETITION FOR A WRIT OF CERTIORARI IS DENIED ON MAY 15, 2006.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Continued from P: 4 of WOC

Supremacy Clause Art VI; Art 111; U.S.C.A. 28 #1254(1) (2000); U.S.C.A. 28 #1257; U. S. C. A. 28 #1257(a); U.S.C. 28#1331; Constitution; 14th Amendment; 14th Amendment Section 1,4thAmendment; 5thAmendment;Rights; 5th Amendment Taking Clause; Probable Cause; Equal Protection; Due Process of the law; Just Compensation; Procedural Due Process of the Law; Obligation of Contract; Substantive Due Process; Loss of Income; Seizure; Collateral Estoppel and Res Judicata; Takings of Private Property; Entitlement;

Fraud; Collusion; and Tortious Acts; Intentional Conduct; Federal Tort Claims Act and State Tort Claims Act; Immunity; Rights; Motion to Dismiss, Warrant;Intentional infliction of Emotional Distress. Relevant portions of these Constitutional and Statutory Provisions are set forth at App. G. on P: 145a-159a of WOC and on P:1a of this Petition of Rehearing

STATEMENT OF THE CASE, FACTUAL BACKGROUND ARE ON P: 4-27 OF WOC; STATEMENT OF FACTS ON P23a-56a of WOC, as stated in the Verified Complaint filed in the U. S. District Court with attached Exhibits.

REASONS FOR GRANTING THE PETITION

The reasons for granting the Rehearing of the Writ of Certiorari are as follows:

Hon. Judge Rutledge confirmed by order Index #79240 dated June 30, 1988 that Ally was illegally evicted and she may Break the lock and enter her business premises with the help of the police.

Hon. Justice Posner confirmed at the trial Index #5610/91 on or around July 1, 1994 to Kishore and Palmour that Ally was illegally evicted from her business premises by Nazmoon Hassan, he did not issue a warrant for the seizure of her business premises or its contents, and he did not order her to remove from her business premises at anytime. On P: 193a. App. X of WOC

The Civil Court Order Index #067496/95 dated June 12, 1995 by Hon. Judge Bernard S. Greenbaum was eroneous when he dismissed Ally's action with prejudice, and Hon. Justice Posner in his May 17, 1996 order confirmed that this is a new action for damages and is not Collateral Estoppel or Res Judicata of the Action 5610/91. On P:192a App. W of WOC.

Hon. Justice Posner confirmed by Judgment Index #5610/91 dated January 19, 1996 that Ally was illegally evicted by the original owner Nazmoon Hassan and she was granted a money judgment of $3,000. On P:198a. App. Y of WOC

Hon. Justice Posner confirmed by order Index #21625/95 dated May 17,1996 that the defendants(Kishore and Palmour are confusing the prior action 5610/91 with this new action for damages. On P190a. App. V of WOC.

The Supreme Court Order Index #21625/95 dated November 13,1996 by Hon. Justice Posner was eroneous when he awarded the defendants Kishore and Palmour $500 in costs and sanctions claiming that Ally's conduct was frivolous in commencing separate actions for the same relief and for bringing on meritless motions when the other action Index#23087/95 was not for the same relief, as confirmed by Hon. Justice Lane on the action #23087/95 dated December 2, 1996. On P: 189a. App. U of WOC.

The Supreme Court Order Index#23087/95dated December 2, 1996 by Hon. Justice Lane confirmed that the action Index #21625/95and the action 23087/95 were not for the same relief whenhe consolidated both actions for joint trial andordered that each action shall retain its own Index # and separate

Notes of Issue shall be filed for each action. On P186a. App. T of WOC

The Supreme Court Order Index #21625/96 dated January 13, 1997 by Hon. Justice Posner was eroneous when he again sanctioned Ally $500 in cost and sanctions because she made a motion to stay the execution of the other order for $500, and she was stayed from any further proceedings in this action Index #21625/95 until she responds to Kishore and Palmour's Interrogatories, which she did serve but it was rejected. On P184a. App. S of WOC.

The Supreme Court Order Index #21625/95 dated May 28, 1997 by Hon. Justice Posner was eroneous when he dismissed with prejudice this action #21625/95 claiming that Ally has failed to comply with the orders of November 13, 1996 and January 13, 1997 when Ally did respond to Kishore and Palmour's interrogatories, but it was rejected. However according to this order Justice Posner only dismissed the action 21625/95 and not # 23087/95 for this action had its own Index #, and own Note of issue. On P: 182a. App. R of WOC.

The Supreme Court Order Index #23514/97 dated November 19, 1997 by Hon. Justice Arthur W. Lonschein was eroneous when he dismissed Ally's verified complaint by motion to dismiss and not by answer, and by saying that this claim as against the movant is clearly meritless, as it is settled that an attorney may not be held liable to a third party for acts done in the course of his representation of a client, in the absence of fraud, collusion, or malicious or tortious act, when the said defendant's intentional action are not only the existence of

actionable wrong but the wrong caused damages and he admitted that he wrongfully prepared an execution which caused Ally's eviction,and it is he (Mr.Graver) who wrote intentional tort on the Request for Judicial Intervention. On P:180a. App. Q of WOC.

The Supreme Court Orders Index #23514/97 dated November 23, 1998 by Hon. Justice Arthur W. Lonschein was eroneous when he granted at least 4 extensions of time to the New York City Sheriffs to answer the verified complaint and they never did. On P: 176a & 178a . App. O & P of WOC.

The Supreme Court Order Index #23514/97 dated November 23, 1998 by Hon. Justice Arthur W. Lonschein was eroneous when he sanctioned Ally $2,500 in costs for frivolous action when it was the said defendant who wrote intentional tort on the Request for Judicial Intervention and he did admit that he wrongfully prepared an execution which caused Ally's eviction. On P: 173a. App. N of WOC

The Supreme Court Order Index #23514/97 dated March 25, 1999 by Hon.Justice Arthur W. Lonschein was eroneous when he denied Ally's motion to Renew on the grounds of additional facts and laws not previously considered and said that it is deemed a motion to reargue, when the verse "as it is settled that an attorney may not be held liable to a third party for acts done in the course of his representation of a client,in the absence of fraud, collusion, or malicious or tortious act," was not a ground for dismissal. (2). It was the said attorney who wrote intentional tort onthe request for judicial intervention. (3).This attorney did admit that he wrongfully made an execution which caused Ally's eviction. On P: 172a. App. M of WOC.

The Supreme Court Memorandum and Judgment Index#23514/97 dated April 30, 1999 and August 19, 1999 by Hon. Justice Arthur W. Lonschein was erroneous when he granted sanctions of $5,000 in costs and attorney fees to the attorney defendant Graver when he never appeared for the hearing, and the Court also said that Ally's action was frivolous within the meaning of #130-1.1 of the Rules of the Chief Administrator of the Court when it was the said defendant who wrote intentional tort on the request for judicial intervention and he also admitted in the motion to dismiss that he wrongfully prepared an execution which caused Ally's eviction. The Court also said that $5,000 shall be sanctions, on account of the motion (to renew) as against the defendant City Sheriffs on whose behalf the City of New York was compelled to defend, when the motion was not against the City Sheriffs for they never answer the verified complaint, and Ally did ask the Court not to allow the City Sheriffs to appear in opposition because the record is reflecting continuous pattern of default and neglect and it will be an abuse of discretion as a matter of law to afford the City Sheriffs still another opportunity to appear in opposition. On P: 168a & 170a. App. K & L of WOC.

The Decision and Order Index #2001-0001 dated February 18, 2003, of the Supreme Court of the State of New York, Appellate Division by Altman, J.P. Smith, McGinity and Townes, jj., concur is erroneous when they affirmed the Judgment with costs and when they made their decision on the 1991 action (5610/91) when they said that the jury found that the plaintiff (Ally) was not wrongfully evicted, but the jury said that Ally was not constructively evicted, and Justice Posner confirmed that Ally was illegally evicted by Nazmoon Hassan the original owner of the building and she was already granted a money Judgment for that illegal eviction. This Court also said that a court previous-

ly dismissed two prior actions by the plaintiff seeking damages arising out of the eviction, and that the plaintiff commenced this action for the same relief, the action #23514/97 was commenced for the new wrongs which Justice Posner did confirmed in his order dated May 17,1996 Index #21625/95 when he said that the defendants (Kishore and Palmour) are confusing this new action for damages with the prior action(Index #5610/91) and this new action is not only against the plaintiffs Kishore and Palmour as in the 1991 Action but also against three new defendants Richard S. Graver, Sheriff Kerry J. Katsorhis and Deputy Sheriff Martello. However the Court said that plaintiff's remaining contentions are not properly before this Court on this appeal. On P:166a. App. J of WOC.

The Order ofthe State of NewYork Court of Appeals dismissed the appeal as of right without costs and said that no substantial constitutional question is directly involved and denied the motion for leave to appeal. On P:160a & P: 162a. App.H & I of WOC. The Index # on App. H & I are not the correct #'s.

The U. S. Eastern District Court Judgment, Civil Judgment and Memorandum and Order dated December 3,2003and November 24, 2003 by Hon. Judge Nina Gershon is eroneous when the Court dismissed plaintiff's verified complaint forlack of subject matter jurisdiction when(1). Plaintiff Ally's verified complaint with attached exhibits to prove the facts, was filed pursuant to Article III of the Constitution and the nature of the suit is Constitutionality Statutes, other Statutory Actions, and on the Basis of Federal Question Jurisdiction. On account of plaintiff's pro-se status, she was not sure what statute to file her action under, so she filed it under the U. S. Civil Statute of FPLR: U.S.C.A 26#2671; should read U.S.C.A. 28#2671, 18 #2111-2112; 18#1006; 28#547; 564; 566 and that plaintiff

seeks damages for the willful, illegal, fraudulent, intentional; collusion, conversion, deliberate; negligent, trespass malicious and tortious acts of the defendants by reason of the willful violation of Section 853 of the Real Property Actions and Proceedings Law, should have read by reason of the unreasonable seizure and not landlord and tenant violation because this action was not a landlord and tenant action, the defendant (Mr. Graver) himself wrote intentional tort on the Request for Judicial Intervention Index #23514/97. (2). A verified complaint is equivalent to affidavit of merit for the purpose of Summary Judgment. (3). Pursuant to U. S. C.A. 28#1331 The District Court shall have original jurisdiction of all civil actions arising under the Constitution Laws, or treaties of the United States. (4). Pursuant to U. S. C. A. 28#1343(a)(1)(2)(3): The District Courts shall have Original jurisdiction of any civil action authorized by law to be commenced by any person: (1): To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 Title 42; (2). To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent. (3). To redress the deprivation, under color of any State Law, Statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of Citizens or of all persons within the jurisdiction of the United States. On P: 1a; 4a; 5a. App. A; B & C of WOC.

The Order of the U.S. Court of Appeals affirmed the U.S. District Courts Judgment and denied the Petition for Rehearing En Banc. On P: 7a & 143a. App. D & F of WOC.

Petitioner Ally believe that it is very important that the U.S. Supreme Court grant the writ of certiorari and make the final decision in this action which may be of some help to others, and guide the lower courts in making a just decision in actions similar to this one.

Ally is respectfully requesting that this Court review all the Orders from the State Courts and the Federal Courts, and for the reasons above and other reasons, which may not be clear to her, since she is a pro-se, and grant the writ of certiorari in the name of Justice.

CERTIFICATION OF PRO-SE PETITIONER

I, Ackleema Ally the pro-se petitioner in this action hereby Certify that this petition for rehearing is presented in good faith and not for delay and that its grounds are limited to intervening circumstances of a substantial or controlling effect and to other substantial grounds not previously presented.

Respectfully Submitted

Ackleema Ally

APPENDIX A

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED
Continued From P:159a. App.G. on P:145a of WOC

Pursuant to 28#1346: One of primary purposes of Subsec. (b) of this section and section 2671 et seq. of this title was to waive sovereign immunity of United States to tort suits in order to provide an orderly system for compensating those who were injured through the tortious acts of government employees committed in the course of their employment. Lepatourel v U.S.,D.C. Neb. 1978 463 F. Supp.264.

Pursuant to 28#2671 Whether a person whose negligent or wrongful act or omission is said to be the cause of an injury, is a federal employee within Federal Tort Claims Act, is to be determined by Federal law rather than by the law of the State. LeFevere v U. S., C.A 5 (Fla.) 1966, 362 F. 2d 352.

Pursuant to 28#2671: Federal Law and not State Law governed determination of question of whether member of National Guard was federal employee with Federal Tort Claims Act. Blackwell v U.S.,C.A.5 (La.) 1963, 321 F. 2d 96.

Pursuant to 28#2671: Whether a person allegedly causing the injury or loss was an employee of the government with in the meaning of Federal Tort Claims Act is a question of federal law, not state law. Sheff v U.S.,D.C. Cal. 1971, 325 F. Supp. 1082.

Fraud under the FTC requires intentional conduct. United States v Green, 35 F.Supp.12 (E.D.N.Y.1960).

Collusion is an agreement between two or more persons to defraud a person of his rights by the forms of law,or to obtain an object forbidden by law. It implies the existence of fraud of some kind, the employment of fraudulent means, or of law -ful means for the accomplishment of an unlawful purpose.

Malicious is a wrongful act intentionally done without legal justification or excuse, an unlawful act done willfully or purposely to injure another.

Tortious is used to denote the fact that conduct whether of Act or omission is of such a character as to subject the actor to liability, under the principles of the law of torts.

The Federal Government has generally waives its non tort Action immunity in the Tucker Acts, 28 U.S.C.A. #1346(a) (2) and its tort immunity in the Federal Tort Claims Act, 28 U.S.C.A. #1346(b), 2674. Most States have also waived immunity in various degrees at both the State and local government levels.

The federal, and derivatively,the state and local governments are free from liability for torts committed except in cases in which they have consented by statute to be sued e.g. Federal Tort Claims Act, State Tort Claims Act. Most States either by statute or court decision have abolished or greatly restricted the doctrine of sovereign immunity at both the State and levels.

Pursuant to U.S.C.A. 28#1346: Federal Tort Claims Act (FTCA) does not create federal substantive cause of action, but merely provides a remedy for state tort claims that

would otherwise be barred by sovereign immunity. Sumner v U. S., M.D.Tenn. 1992, 794 F. Supp. 1358.

The States are bound to provide compensation for takings of private property pursuant to the Just Compensation Clause of of the 5th Amendment as made applicable to the States through the Due Process Clause of the 14th Amendment. First English Evangelical Lutheran Church v Los Angeles County (1987).

Whether an interest is a right or a privilege, when it is intentionally denied, procedural due process must be afforded. Goldberg v Kelly (1970).

The key concept in defining property today is "entitlement" when the government recognizes that an individual is legally entitled to a benefit, it thereby creates an expectancy that the benefit will not be arbitrarily terminated. A property interest is created. The contract of lease support claims of "entitlement."

The first element for intentional infliction of emotional distress is whether the defendant's conduct was extreme and and outrageous. Davis v Household Finance.

Federal Tort Claims Act covers intentional Torts. Intentional Torts are "wrongful acts" within the meaning of Statute making the Act sole remedy for actions against U. S. for negligent or wrongful Act or omission of employee of Government. Duffy v U.S., C.A. 7(Ill.) 1992, 966 F. 2d 307.

Pursuant to CPLR 6216:1 : To levy on real property, the Sheriff (not the plaintiff) simply files a notice of attachment in the appropriate County Clerk's office. If the Sheriff for-

gets to do this, he is liable in damages to the plaintiff. Doran v Sheriff of Orange County, 1977, 57 A.D. 2d 605, 393 N.Y. S. 2d 785.

Pursuant to CPLR 6214: An officer attaching chattels or levying execution thereon is liable for his negligence in caring for them. Vangellow v Eastside Sav. Bank 1939,11 N.Y.S. 2d 982.

Willful and malicious misconduct is actionable under Federal Tort Claims Act; Congress has specifically provided that such Act shall apply to the intentional torts of federal law enforcement officers, including claims arising out of assault and battery. Hoston v Silbert, 1982, 681 F.2d 876, 220 U.S. App. D.C. 361, on remand 566 F.Supp. 1125.

Government may be sued on claim of trespass. Black v Sheraton Corp. of America, 1977, 564 F. 2d 531, 184 U. S. App. D.C.46.

United States could be held liable under the Federal Tort Claims Act for intentional infliction of emotional distress, which was not specifically exempted from general rule of liability and inclusion of which in law enforcement statutory proviso was not necessary to create sovereign liability for tort. Crain v Krehbiel, D.C.Cal.1977.443 F.Supp.202.

Claim against Government for intentional infliction of emotional distress is not excluded as matter of law from Federal Tort Claims Act. Sheehan v U. S., C. A. 9 (Cal.) 1990, 896 F.2d 1168.

District Court is not required to dismiss complaint alleging conduct which might fall within intentional tort exception to Federal Tort Claims Act,where conduct also supports claim for tort not within exception. Santiago-Ramirez v Secretary of Dept. of Defense, C.A.1 (Puerto Rico) 1993, 984 F. 2d 16.

Under Federal Tort Claims Act, federal court is to determine liability by applying state law that would apply to private individual under like circumstances. Faughnan v Big Apple Car Service, E.D.N.Y. 1993, 828 F. Supp. 155.

In action under the Federal Tort Claims Act, state law must be applied, making United States liable in same manner and to same extent as private individual under like circumstances. Lahren v U. S., D. C. N. D. 1977, 438 F. Supp. 919.

This section (28#2674) provides that United States shall be Liable to the same extent as a private individual under like circumstances evidence a congressional intent to have the United States treated like any other party in a tort suit. Dumansky v U.S., D.C.N.J. 1980, 486 F. Supp. 1078.

Pursuant to U.S.C.A. 28 #2674: This chapter and section 1346(b) of this rule are designed to provide remedy for persons injured through negligence of government employees when individual may be so liable under state law. U.S. v Browning, C. A. 10 (Utah) 1966, 359 F. 2d 937.